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Current Topics.

Mr. Justice Oliver Wendell Holmes.

MEMBERS OF the legal profession in this country will join with their transatlantic *confreres* in the feeling of deep regret with which they have heard of the resignation of this distinguished and veteran judge. Veteran he may well be called, for he began his judicial career as long ago as 1882 when he was appointed an Associate Justice of the Supreme Court of Massachusetts, and Chief Justice in 1899, a post which he held till 1902, when he was promoted to a seat on the bench of the Supreme Court of the United States, the goal of every American lawyer's ambition. For this position OLIVER WENDELL HOLMES came well prepared. Early he recognised that law was not a "rag-bag of details," but a system of well-ordered principles which it was the business of the lawyer to apply. In his classic work, "The Common Law," he demonstrated in masterly fashion how law should be studied by the exhaustive examination of its historical development and the light this throws on his present position. A perusal of the book forms an epoch in every young lawyer's life. That work he followed up by a collection of papers on legal subjects which again showed his intense interest in legal science and love of the common law. The biographer of the late Mr. Justice HIGGINS of the Australian bench, speaking of that distinguished judge's visit to America in 1924, says that the most serene person he met was HOLMES, hale and hearty at eighty-four, coming driving to meet him at the railway station some miles out of Boston, and the writer adds, "he had long had an admiration for HOLMES as one of the greatest jurists in the English-speaking world; it was inspiring to find him holding to his humane liberalism as tenaciously in extreme old age as he had done in his middle years." Mr. Justice HOLMES seems to possess the secret of perpetual youth. Length of days with love of work has been vouchsafed to him; he is now in his ninety-first year; but his interest in life and its problems is as keen as ever, although as he said in his letter to President HOOVER, his weight of years makes it imperative on him to "bow to the inevitable." Many honours have come to him in the course of his long life, some because of the fact that he is the son of the genial author of "The Autocrat of the Breakfast Table," and its companion volumes, but more because of his own achievements in the exposition of those principles which it falls to the lot of the judge to expound and demonstrate their reasonableness. Among American citizens none, we feel sure, is regarded with so much affection and admiration in England as the veteran judge for whom we wish still years of happiness in his retirement before the call comes to him for higher service.

Sentences on Shoplifters.

WE ARE told that at a recent meeting of the Drapers' Chamber of Trade a report presented by a committee, dealing with losses sustained by retailers through the activities of shoplifters, came up for consideration. The committee voiced the opinion that sentences inflicted were often "inadequate to act as a deterrent." The chairman of the council said that the Chamber was in touch with the Home Office in the matter. It is difficult to see what the Home Secretary could do; exercising the prerogative of mercy, he may remit sentences and pardon offenders, but he has no converse power to increase punishment, and no right to interfere with the judiciary. But there is another side to the question. The membership of the chamber, we are told, comprises the big retail drapers in London and provincial centres. It is notorious that in their shops wares are displayed in a way which will tempt some to buy, some to steal. If determent were the sole object of punishment, the maxim "the greater the temptation, the severer the sentence" would be perfectly sound. We do not, however, suggest that it is one which appeals to the Drapers' Chamber of Trade; but we do suggest that there would be less occasion for criticism of the kind they have offered if facilities for picking and stealing were reduced.

The Enticement Case.

FROM THE headlines in the Press to the reports of the case *Place* v. *Searle*, it would appear that the law, as discussed and laid down in the Clitheroe Case, *R.* v. *Jackson* [1891] 1 Q.B. 671, has been forgotten in the present generation, for MCCARDIE, J.'s, quotations from it were plentifully stressed. If an English wife can lawfully walk out of her husband's house, with the intention of never returning to it, even though he has been guiltless of matrimonial offence, it would appear a logical deduction that he cannot control her choice of friends, male or female. Certainly he cannot prevent her meeting persons with whom he has forbidden her to associate outside his house. As to whether a man forbidden the house by the husband is a trespasser when he enters it at the invitation of the wife may be suggested as a point for the next legal moot, with a possible variation when the house is the wife's separate property. MCCARDIE, J., spoke in somewhat scornful tones of a wife being ranged with the servants of a house *quâ* enticement, but he might fairly have stated that sauce for the goose is here held to be applicable to the gander, and the wife has her action for the enticement of her husband as laid down in *Gray* v. *Gee* (1923), 39 T.L.R. 429, and see note, 72 SOL. J., 492. It is not altogether easy to follow the judge's distinction between

enticement and alienation of affection, for the action in respect of the latter injury, so frequent in America, is, in effect, one for loss of consortium: see *Fratini* v. *Caslini* (1894), 44 Am. St. Reports, 843. Presumably a woman who retains her affection for her husband will not leave him, and loss of affection is a necessary element of her departure. If, then, the loss of affection is due to the representations, persuasions, or arguments of the defendant in a particular case, the wrong appears to be complete. "Enticement" suggests that the wife has left the plaintiff's company on the inducement of enjoying the defendant's, but it is submitted that the action would lie in England without evidence of "harbouring." Mrs. Jackson's case, of course, entirely destroyed the consistency and equilibrium of the older law, but its foundations had already been hopelessly undermined by the Matrimonial Causes Act, 1884, which abolished imprisonment for contempt of a restitution decree, and was passed to prevent Mrs. WELDON sending her husband to prison: see *Weldon* v. *Weldon* (1884), 9 P.D. 52. But for that Act, Mrs. JACKSON would have been sent to prison for her contempt of the restitution decree obtained by Mr. JACKSON, and kept there until she returned to him.

Debt Difficulties.

FROM TIME to time cases crop up in which county court judges, doubtless influenced by the particular circumstances of the cases, make orders for the repayment of debts by such comparatively trivial instalments that sometimes the unfortunate creditor has no hope of recovering the whole of the money during his lifetime. In the latest reported case of this nature a debtor who owed £39 4s. was ordered to pay it off at the rate of 4s. a month—which meant that he would require a little over sixteen years. Money doubles itself in fifteen years at 5 per cent. compound interest! One hundred and sixty years was given to one debtor who was ordered to pay £8 by instalments of a penny a month, while the longest recent instance is that of the man who, owing £2,900, was ordered to pay £1 a month, so that over 240 years would be necessary to eliminate the debt. The authorities in this class of case, briefly summed up, appear to show that where a county court judge has made an order under s. 5 of the Debtors Act, 1869, for the payment of a judgment debt by instalments execution cannot be issued upon the original judgment but only for the amount of instalments which have become due and are unpaid. In the case of default in the payment of an instalment a committal order may be made against the debtor on proof of the default, but the question for determination is whether the debtor, at the time of the application to commit him, has or has had since the date of the instalment order, the means to pay the amount he was bound to pay under the order.

The Electric Comb Case.

NO ONE with knowledge of law reading the evidence in *Wood* v. *Letrik, Ltd.*, *The Times*, 13th January, could fail to recall the *Smoke Ball Case*, *Carlill* v. *Carbolic Smoke Ball Co. Ltd.* [1892] 2 Q.B. 484, and [1893] 1 Q.B. 256, which of course was duly cited, and followed by ROWLATT, J. Both were cases of advertisers offering definite sums of money to such members of the public who should use their remedies without experiencing the promised and desired effect, of members of the public claiming the money, of the refusal of the advertisers to admit such claims on various pleas, and of the decision of judges that the pleas raised against paying over the money offered had no substance. The Smoke Ball Company offered £100 to anybody who used their remedy and afterwards contracted influenza. Letrik, Ltd., advertised that their electric comb restored grey hair to its natural colour, and added: "in ten days not a grey hair left, £500 guarantee." ROWLATT, J., found that the plain meaning of this statement was that, if the purchaser used the comb according to the directions, and found a grey hair on his head at the end of the period, the company would pay him £500. There was no real dispute that the plaintiff had bought and used the comb, and the fact that after doing so as directed, he had, not only one, but innumerable grey hairs, was apparent when he entered the box to testify. The technical point as to whether the defendants could be bound by a contract with an unknown person and without being aware of it was covered by the decision in the *Smoke Ball Case*, and ROWLATT, J., over-ruled the argument that the advertisement was mere puffery, and the further one that to turn grey hair black in the way suggested was impossible of performance, and therefore could not bind anybody. In fact grey hair has on occasion been restored to its pristine colour in rejuvenation cases, and the judge had no difficulty in disposing of the point. The legal interest in these cases lies in the method of offer and acceptance of a contract, and the consideration. Inhalation of the smoke ball dust, as directed, usually resulted in twenty or thirty sneezes, and both HAWKINS, J., and the Court of Appeal found that to suffer such inconvenience at the advertisers' direction was good consideration. The moral for advertisers of such wares appears to be to stick to puffery, and not to make definite offers without as definite an intention of fulfilling them. The vendor of the pig in the poke may safely bellow that, in his opinion, it is the finest animal of its kind that ever breathed, but, if he guarantees weight and dimensions untruly, he is looking for trouble. On the credulity of the public generally, reference may be made to the wise words of HAWKINS, J., at pp. 488-9 of the 1892 report. Judging from various advertisements, some people must believe that soap and pills have an unlimited beneficial effect on the human body, because the vendors of these articles say so.

Maintenance Orders and Income Tax.

A CASE recently heard by the Ealing magistrates involves a point of considerable importance, on which a High Court ruling appears to be desirable. A husband, whose wife had obtained a separation order prior to the passing of the Finance (No. 2) Act, 1931, came to the court to claim a reduction of the weekly sum payable under it on the ground that, since the date of it, the new income tax demands on him decreased his effective income by three shillings a week. The magistrates were so moved by his plea that not only did they consent to make a reduction, but, in the face of the strong remonstrances of the wife, who said that, as things stood, she had only seven shillings and sixpence a week left after paying her rent, passed on the whole burden to her by reducing her allowance by the same amount. The report is a very short one, so probably does not give all the facts on which the decision was based, but, *prima facie*, if reduction is to be made in favour of a husband paying a higher tax, it would appear no more equitable to place the whole of the new burden on the wife than it would be to refuse to vary the order, and so leave it wholly on the husband's shoulders. Section 7 of the Summary Jurisdiction (Married Women) Act, 1895, giving magistrates power to vary or discharge an order, appears to confer unlimited discretion on them, so long as the weekly sum ordered does not exceed £2, and the wife continues to live chastely and apart from her husband. In the Divorce Court, an order for alimony or permanent maintenance specifies whether the income payable is free of tax, and, if not so free, the tax adjusts itself. Orders under the Act of 1898 are, of course, payable gross, but the court should no doubt estimate the husband's income as his disposable income after payment of tax, see *Daywell-Steyning* v. *Daywell-Steyning* [1922] P. 280, and *Sherwood* v. *Sherwood* [1928] P. 215. On that footing, an increase in tax on a fixed income would be a decrease in disposable income, but a difficulty which does not appear to have been observed in the above case may be suggested in the requirement of "fresh evidence" by s. 7, *supra*. A new

statute is judicially noticed without being brought into evidence at all. Possibly, however, the effect of the new statute on the income would be "fresh evidence" within the section, though again it would merely amount to an arithmetical computation.

In Good King Charles' Golden Days.

1 CAR. I, c. 1 (1625), is an even more venerable statute than 10 & 11 Will. III, c. 17, and, the disrespectful might observe, quite as moth-eaten, with its references to bear-baiting, bull-baiting, etc. It forbids all extra-parochial Sunday sports and pastimes whatever, and has been invoked against certain men alleged to be bookmakers, who resorted to a field near St. Albans for greyhound-racing. This field was stated to be outside all their parishes. They were fined three shillings and fourpence under the Act, and if any of them does not pay, and the fine cannot be recovered by distress, he must be set publicly in the stocks by the space of three hours. For how long the Act lay dormant in the eighteenth and nineteenth centuries it is difficult to say, but some bright soul invoked it at Brentford in 1906, against rabbit-coursing, for, the owner of the field where it took place admitting the public free, the Act of 1781 was not applicable. The proceedings are mentioned in 70 J.P. 484, 508 and 563. There was evidence of a disorderly rabble, and betting. After an adjournment to consider the law, the chairman announced the decision of the Bench to dismiss the summons, on the ground that rabbit-coursing could not have been forbidden by the Act, for it was not a known sport in 1625. Ultimately it was dealt with as a common nuisance, and also under the Act of 1781, since money had subsequently been taken for admission to the field. Perhaps, one day, some defendant will so arrange his affairs that he can insist on the stocks as a matter of right.

"This *is* a Theatre."

AN ENGLISHMAN humiliated by reading "The English: Are they Human?" might find consolation and, to some extent, restoration to self-satisfaction, by comparing the judicial proceedings of his own nation with those of some of the American States. We do not know who was the English judge who first uttered the memorable and oft-quoted words "This is not a theatre," words which have many times checked risibility and restored dignity. He would have to find some other formula if he presided in the criminal court at Clarksburg (W. Virginia). There, recently, a murderer known as the American Bluebeard was tried in the Opera House, which was crowded in all parts by spectators, from whom a cheer arose, swelling in volume, as the verdict of "guilty" reached the hundreds of people gathered outside. The prisoner himself seems to have contributed little to the dramatic performance, for, we read, he remained unmoved, chewing gum the while, what time the prosecutor strode about on the stage calling on the jury to send the prisoner to the gallows. His "silver-haired counsel," however, made good the deficiencies of his client by an adequate display of emotion, tears streaming down his cheeks. Very likely justice was done in this particular case, but can anyone seriously doubt that in such a place, with such an audience and in such an atmosphere, reason might easily give way to emotion and anything might happen? English judges have a short way with any undue display of theatricals in word or deed. A dramatic counsel who was making the jury's flesh creep, as he opened his case, with repeated references to "Blood! Blood!" was checked by a matter-of-fact judge who broke in with "One moment, please! Let me get my notes right. I'm not quite clear whether all the floor, or only half of it, was covered with blood." And another, warming to his work and emphasising his points with clenched fist was cooled, not to say chilled, by a rather querulous appeal from the Bench: "Don't bang, *please*!"

Criminal Law and Practice.

POACHERS AND MOTOR CARS.—A weekly paper announces that the question of the right of the Crown to confiscate motor-cars used by poachers is likely to be raised shortly by means of a test case. Apparently the point has been discussed in Scottish courts without any decision having been given, and it is common knowledge that on both sides of the border poachers have for some years past been using motor-cars to take them long distances to do their poaching, to transport their captives, and to make good their escape.

However desirable it may be that their motor-cars should be forfeited, it is by no means clear that the law authorises any such measure. The Poaching Prevention Act, 1862, can hardly have contemplated the use of mechanically-propelled vehicles, and one argument against their inclusion in the scope of the section has been founded upon that fact. A more substantial difficulty, however, is the wording of the section, which refers to persons coming from land where they have been unlawfully in pursuit or search of game, having in their possession any game unlawfully obtained, or "any gun, part of a gun, or nets or engines used for the killing or taking game," and also gives authority to search "any cart or other conveyance" in which it is suspected that there is carried such game or thing. If the game, or the articles, are found in the conveyance or on the suspected person, "such game, article or thing" may be seized and detained; subsequently, upon conviction, there is a forfeiture of the "game, guns, parts of guns, nets and engines," but not, be it noted, of the cart or conveyance.

Now a motor-car may reasonably be called a conveyance. It contains an engine, and perhaps it might be itself designated an engine for some purposes. It cannot, we think, be properly included in the expression "engine used for the killing or taking game," especially as it is not *ejusdem generis* with guns and nets. The taking of game, we submit, means here the capture rather than the taking away. Thus a gun is for killing and a snare is for taking.

On the whole, therefore, it would seem that there must be further legislation if it is desired that the poacher's car should be forfeited on his conviction.

FACT OR LAW?—Whether a point in dispute is a question of law or of fact is not always easy to determine, especially as many difficult points are best described as questions of mixed fact and law. The matter is not merely academic; for instance, justices should generally consent to state a case upon a point of law, but they should not do so upon a question only of fact, as the High Court will not review a finding of fact as long as there was some evidence to support it. It is, however, a question of law whether there is any evidence, or none, upon which to found a decision; sufficiency of evidence is a matter for the justices. Thus there are many authorities upon what is and what is not corroboration in a bastardy case: but beyond deciding that question of law the High Court does not set aside the judgment of a bench of justices on the ground that the learned judges, had they been in the place of the justices, might have attached less weight to the corroborative evidence.

A recent illustration of the principle is to be found in *Pease* v. *W. J. Simms, Son & Cooke, Ltd.* (1931), 95 J.P.N. 811, which turned upon the question whether a whole building site constituted "premises on which machinery . . . is temporarily used," or whether a certain portion was not a part of the premises or factory but outside it. The justices stated a case, and the Divisional Court held that though possibly at one time the "premises" included the whole site a time came when houses ceased to be part of the general premises, and dismissed the appeal. Magistrates should remember that if the High Court rule be reluctant to interfere on facts it will not be misled by any attempt to burke a question of law by "finding it as a fact."

Water, Gas and Electricity Charges and Receivers, etc.

In a recent article on the recovery of water rates, and gas and electricity charges (see Sol. J., 21st November last, p. 787), the subject was dealt with in relation to the supply authority and its rights against its consumers direct. But other considerations frequently arise where the consumers, owing to the exigencies of circumstances, find themselves financially embarrassed. In these cases the insolvent or temporarily embarrassed debtors resort to, or have forced upon them, one or other of the expedients provided or permitted by the law for dealing with such situations in the interests of all concerned. Thus, receiverships, liquidations, bankruptcies and deeds of assignment for the benefit of creditors may be brought into operation. It is proposed now to deal with the question from this standpoint.

Water, gas and electricity supplies are commonly referred to as public utility services. They are necessities of daily domestic and commercial life in the present state of civilisation.

Parliament, in granting powers to water, gas and electricity supply authorities (whether local authorities or companies), have also conferred upon the tenants or occupiers of premises certain rights of obtaining supplies of the commodity in question. It is not surprising, therefore, to find that the various decisions dealing with the subject-matter of this article are concerned with the question of the occupation of premises, whether domestic or business.

The appointment of a receiver does not operate as a change in the occupancy of the company's premises. The liquidator of a company appears to be in the same position (*In re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640; see also *In re Marriage, Neave & Co.* [1896] 2 Ch. 663, dealing with rates). So far as the undertakers are concerned, therefore, the debtor is still their consumer against whom they can exercise their statutory powers, of which "cutting-off" is perhaps the most powerful. Thus, it comes about that if it is essential that the receiver must have a supply of water, gas or electricity for the proper carrying out of his duties, he must pay all outstanding charges, otherwise the supplies would be disconnected.

First, to deal with gas supplies. One of the authorities most usually referred to is *Paterson* v. *Gas Light & Coke Co.* [1896] 2 Ch. 476. In this case a limited company was supplied with gas by the defendants. Joint receivers and managers having been appointed, they entered and carried on the company's business and were supplied with gas by the defendant company. Certain arrears were outstanding at the time of the appointment of the receivers, and the defendants demanded payment with a threat of cutting off the supply in the event of non-payment. The receivers brought this action to restrain the threatened cutting off and claimed to be entitled to a supply of gas under the provisions of s. 11 of the Gasworks Clauses Act, 1871. The Court of Appeal decided that the receivers were not a new or incoming tenant of the premises, but were merely in the position of a caretaker or custodian of the company and could not demand a supply of gas except on payment of the arrears outstanding. *Husey* v. *Gas Light and Coke Co.* (1902), 18 T.L.R. 299, was a decision to the same effect and followed *Paterson's Case*. Swinfen Eady, J., in this case pointed out that while s. 11 of the Gasworks Clauses Act, 1871, entitled the owner or occupier of premises to demand a supply of gas, yet s. 16 of the Gasworks Clauses Act, 1847, enables a gas company to cut off the supply when the charges are in arrear and the two must be read together. The case of *Johnson & Hughes* v. *Adolphe Crosbie Ltd.* (1909), 74 J.P. 25, may also be usefully referred to. In this case the gas company, on the receiver refusing to pay the arrears owing, obtained an order and warrant from the justices to levy a distress on the company's goods. They then applied in the debenture-holders' action for leave to proceed with the distress and the court granted leave accordingly.

The official receiver in bankruptcy is apparently in a similar position to a receiver and manager of a company. The making of a receiving order does not divest the debtor of his property, nor place him under the disabilities of an adjudicated bankrupt (*Rhodes* v. *Dawson* (1886), 16 Q.B.D. 548). The official receiver acts as interim receiver and manager of the debtor's estate, but the receiving order does not vest any estate or interest in him or cause any change or transmission of interest or liability (see *In re Berry, Duffield* v. *Williams* [1896] 1 Ch. 939). Thus, the debtor still remains in occupation of his property, and the official receiver, not being a new incoming tenant, cannot demand a supply of gas without paying the arrears owing by the debtor (*In re Smith, Ex parte Mason* [1893] 1 Q.B. 323).

Next, with reference to electricity supplies. By virtue of the Electric Lighting Act, 1882, ss. 19, 20, and the Schedule to the Electric Lighting (Clauses) Act, 1899, owners or occupiers of premises within the undertakers' area of supply are not entitled to have a supply of current unless and until they have entered into a contract with the undertakers therefor. The leading authority is *Husey* v. *London Electric Supply Corporation* [1902] 1 Ch. 411. Here the debtor company carried on a hotel business and were supplied with electric current by the defendants under an agreement. The receiver, on his appointment, declined to sign an undertaking to pay for arrears then outstanding as well as accounts accruing, whereupon the defendants threatened to cut off the supply. The receiver applied for an injunction to restrain them, but the Court of Appeal (reversing Kekewich, J.) declined to grant it, holding that the company were entitled to cut off the supply. He was not a new "occupier," and thus could not demand a supply without paying the arrears. In the case of *Granger* v. *South Wales Electric Power Distribution Company* (1931), 29 L.G.R. 209, a receiver was successful in obtaining a supply of electricity to a colliery in respect of which he was appointed receiver and manager by debenture-holders. He declined to pay the outstanding arrears and claimed to be entitled to a supply of electric energy under s. 40 of the power company's private Act. This section enables "any person" to require a supply upon entering into a binding agreement with the company; nothing being said about "owner or occupier" of any premises. Bennett, J., therefore declined to read those words into the Act and granted an injunction restraining the company from cutting off the supply. This, however, is a special case depending on the particular words of a private Act, and is not of general application, as may be seen by a decision of Eve, J., in *McLintock* v. *Westminster Electric Supply Corporation Ltd.* on the 1st May last. In this case, on the appointment of the plaintiff as receiver and manager (of Gamages (West End) Limited), a considerable sum was owing in respect of electricity supplied. On the defendants threatening to cut off the supply owing to non-payment of the arrears, the receiver applied for an injunction to restrain the execution of such threat. Eve, J., refused the application. He held that the receiver was not a person entitled to a supply without entering into the requisite contract with the defendants therefor, and that the defendants were entitled to decline to afford such a supply except on their own terms, which, of course, included payment of the outstanding arrears.

With respect to water, the position is similar. The owner or occupier of any dwelling-house within the undertakers' area of supply (extra-Metropolitan) is entitled to require a supply of water in accordance with ss. 48 to 53 of the Waterworks Clauses Act, 1847. In the area of the Metropolitan Water Board, s. 8 of the Metropolitan Water Board (Charges) Act, 1907, is the appropriate statutory authority. Water undertakers, however, in the absence of express provisions of private Acts, are only compellable to afford domestic supplies. They

are not obliged to give "trade" supplies except on such terms and conditions as they think fit. Thus, there appears little chance of a receiver obtaining a non-domestic supply except by paying for any outstanding arrears.

It is submitted that similar principles with regard to public utility supplies are applicable in the case of a trustee under a deed of assignment for the benefit of creditors. Though citable authority for this does not appear to have found its way into the more familiar reports, such a trustee claiming that he is carrying on the debtor's business as trustee must pay the debtor's arrears if he wants a supply of water, gas or electricity. If he claims he is a new legal owner, then he must enter into a contract with the undertakers before he is entitled to a supply of the desired commodity, and the undertakers can decline to supply except on their own terms.

The position of the trustee in bankruptcy is different from that of a receiver, liquidator, etc. On the adjudication the debtor is by statute divested of all his property, and it becomes vested in the trustee (Bankruptcy Act, 1914, s. 18 (1)). The debtor has, therefore, no further interest in it, and the trustee in bankruptcy becomes a new owner or occupier. He has accordingly been held entitled to demand, e.g., a supply of water as a new tenant without being compelled to pay off the bankrupt's outstanding arrears (see *In re Flack, Ex parte Berry* [1900] 2 Q.B. 32).

Marginal Notes to Statutes.

As every one who opens a volume of modern statutes is aware, each section of an Act of Parliament is provided with a marginal note intended to be an index or key to the subject-matter dealt with. Coming out as the volume does under the *ægis* of the King's Printer, the layman not unnaturally feels considerable surprise when he is told that these marginal notes, however useful in general they may be, are of doubtful interpretative value. "Why," he may justifiably ask, "should the King's Printer's copy of a statute be equipped with a marginal note, if, for the purposes of construction, I am not to be allowed to pay any regard to it?" Only recently the learned judges in the Court of Appeal were asking for precise information on this subject, and one of the counsel in the case before the court, who is also a distinguished member of the House of Commons, was able to tell the judges this much, that the practice of the House of Commons is not to touch the marginal notes on Bills which it has under consideration. This is borne out by a ruling of the Chairman of Committees in 1875, that the marginal notes on Bills cannot be amended in Committee, and this ruling, which extended to titles of fasciculi of clauses and cross-headings was supported by a former Chairman. The rule has its disadvantages, for it has been found on more than one occasion that an alteration in the substance of a section has left the marginal note attached to it meaningless. An example of this is furnished by the Married Women (Maintenance in case of Desertion) Act, 1886. Section 1 of that statute enables a married woman, deserted by her husband, to summon him before justices who may order him to pay alimony. Sub-section (2) of the section has as its sidenote the words, "Custody of children," but the body of the sub-section has no reference to this subject, which doubtless had been cut out during the progress of the Bill through Parliament. In earlier days a Bill was engrossed without punctuation on parchment, and without marginal notes, and it was consequently correct to say then that these useful adjuncts, which may have been added by editors of the printed statutes, formed no part of the Act and therefore could not be taken into account in construing it. But the old practice was discontinued in 1849, and since then a copy of each Act, printed on vellum by the King's Printer, is preserved in the House of Lords and constitutes the official record of statutes, and on that printed copy both marginal notes and punctuation now appear, a circumstance which might seem sufficient to justify the courts in treating them as an integral part of the Act. But on this, as on so many other points, judicial opinion has varied from time to time. Baron Martin in *Nicholson* v. *Fields* (1862), 31 L.J. Ex. 233, took a marginal note into account in construing a section, observing, incidentally, "that the persons who frame these marginal notes are generally persons of education and understanding"; and in *Bushell* v. *Hammond* [1904] 73 L.J. K.B. 1005, the Master of the Rolls dealing with s. 11 of the Licensing Act, 1902, after saying that it was necessary to have regard to the whole of its provisions, added "The sidenote, also, although it forms no part of the section, is of some assistance, inasmuch as it shows the drift of the section." Other learned judges have taken different views as to the effect of the marginal notes, and it can only be said that much must depend upon the individual opinion of the judge before whom the question arises whether he will or will not regard the terms of the sidenote as possessing an interpretative value.

In the late Sir Courtenay Ilbert's work "Legislative Methods and Forms," it is said that "Attention should be paid to the framing of marginal notes. It should be general and usually in a substantial form, and should describe, but not attempt to summarise, the contents of the clause to which it relates. For instance, a marginal note should run: 'Power of [local authority] to, etc.' and not 'Local authority may, etc.'" Lord Thring, the other great authority on Parliamentary draftsmanship, says in his "Practical Legislation," that "Marginal notes should receive more attention than is usually given to them. Each note should express in a concise form the main object of the section on which it is made, or should at least indicate distinctly its subject-matter." If these suggestions were read, marked, learned and inwardly digested by those in charge of Bills, and if some official of the House were instructed to watch that the marginal note as printed has not by an alteration of the section been divorced from it either in whole or in part, the difficulties that arise as to conflicts between the section and note would be less frequent, with consequent advantage to everyone called to construe the Act.

Reports of Judicial Proceedings.

The liberty of the press is no greater or no less than the liberty of the individual. It is obvious, therefore, that newspaper reports of proceedings in courts of law should conform to certain principles. In this connexion, fair and accurate reports of judicial proceedings were, and still are, privileged at Common Law. But the privilege is qualified only, and is lost by the plaintiff showing that the defendant acted maliciously in making and publishing the report. Moreover, the privilege does not exist where (1) the court has itself prohibited the publication, or (2) the subject-matter of the trial is an obscene or blasphemous libel or otherwise unfit for publication, or (3) the subject-matter is within the provisions of the Judicial Proceedings (Regulation Reports) Act, 1926 (16 & 17 Geo. 5, c. 61). The above rule of qualified privilege applies to all proceedings in any court of justice, superior or inferior, of record or not of record. It is immaterial whether the proceeding be *ex parte* or not, whether the matter be one over which the Court has jurisdiction or not (*Ushill* v. *Hales* (1878), 3 C.P.D. 319), and whether it disposes of the case finally or sends it for trial to a higher tribunal (*Kimber* v. *The Press Association* [1898] 1 Q.B. 65). A fair report of proceedings before the General Medical Council (*Allbutt* v. *General Medical Council*, 23 Q.B.D. 400) is privileged. An accurate transcript of the records of a court relating to any judicial proceeding is also privileged; but a charge-sheet at a police court is not a part of the record of the court (*Furniss* v.

Cambridge Daily News, Ltd. (1907), 23 T.L.R. 705). In any event, the report of a judicial proceeding need not be *verbatim*; it may be abridged or condensed, but it must not be partial, and the reporter must not add any comments of his own. The accuracy of the report is not judged by the standard as would be applied to a report made by a professional law reporter; it is judged from the standpoint of persons whose function it is to give a fair account to the public. Such being the Common Law on the subject, the Legislature has put the matter on a statutory basis in s. 3 of the Law of Libel Amendment Act, 1888 (51 & 52 Vict., c. 64), which provides that: "A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter." It may be stated that this section in no way adds or subtracts from the privilege which exists at Common Law. As an example of a good defence afforded recently by that section—which would have been an equally good defence at Common Law—we may refer to the case of *Smith* v. *Bolton Evening News* (*The Times*, 15th December 1931), tried before Mr. Justice TALBOT at Manchester Assizes on the 11th December 1931, where the plaintiff complained of a report in the defendant newspaper which referred to himself, and which was headed "Prison for Hairdresser," and said that the plaintiff was committed for twenty-one days in lieu of payment. It appears that the plaintiff had got into arrears with the maintenance which he had been ordered to pay to his wife, whereupon the magistrates at Bolton Police Court ordered him to pay the money, or in default go to prison for twenty-one days. About an hour later, when the reporters had left the court, the money was paid and the plaintiff was released; he was never actually in prison. The fact that the money was paid, however, was not known to the reporters at the time they left the court. The jury took the view that there was no case against the defendants, whereupon judgment was entered for them, with costs.

Legality of Traffic Signals.

THE recent announcement made by certain daily newspapers, that ignoring traffic signal lights is, to quote one headline, "not an offence," is typical of the general ignorance which prevails concerning what the Road Traffic Act does and does not contain. The cases out of which the "discovery" arose were both decided by the Bournemouth magistrates on 7th January, 1932, when two motorists were charged with failing to stop their cars when traffic signal lights were against them. The magistrates dismissed both cases on the ground that the specific offence charged did not yet exist under the Road Traffic Act, 1930, as the signals had been placed without proper authority. Section 48 of the Road Traffic Act, 1930, empowers highway authorities to "cause or permit traffic signs to be placed on or near any road in their area," subject to the Minister's general directions, and it provides that the signs are to be of the prescribed size, colour and type except where the Minister authorises the erection of a sign of another character. The section also provides that after the commencement of the Act no traffic signs shall be placed on or near any road except under and in accordance with this section. Curiously enough the Bournemouth Corporation was empowered under its Act of 1930 to erect traffic signalling apparatus in any street or road, and the Road Traffic Act, 1930, received the Royal Assent on the same day. It would not, however, be quite correct to say, as the chairman of the bench is reported to have stated, that powers given to local authorities to erect traffic signals were in any way repealed by the Road Traffic Act, 1830, or that traffic signals already erected were not legally erected. The correct position appears to be that any traffic signals erected after the passing of the Road Traffic Act, 1930, must be in accordance with the general directions of the Minister in order to be legal erections. The prosecution urged that the Minister of Transport had authorised by letter the erection of the signals. Nevertheless, however summarily Ministers of the Crown may act in pursuance of their powers under other statutes, the Road Act, 1930, prevents the Transport Minister from making regulations willy-nilly. Section 111 of the Act provides that "any regulations made by the Minister under this Act shall be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such regulation is laid before it praying that the regulation shall be annulled, it shall henceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of a new regulation." It is s. 111 also which provides the penalty for infringement of any regulations lawfully made, so that it is clear that it is not an offence under that section to ignore unauthorised traffic signals. But it is undoubtedly an offence under s. 12 to drive a motor vehicle on a road without due care or attention, and persons who ignore traffic signals, legally or illegally erected, may thereby render themselves liable under s. 12. Many traffic signals in the provinces were erected before the coming into operation of the Road Traffic Act, 1930, and it would be surprising to learn that the legality of these erections has been disturbed by the Road Traffic Act, 1930. Actually, it has not, and any offence against any local bye-laws in this respect is still an offence and is punishable as such, as well as being punishable as careless driving under s. 12 of the Road Traffic Act.

Redundant Insurance.

THE principles applicable where a claim is covered by two policies of insurance, each of which by its terms repudiates liability if indemnity is afforded the insured by any other insurance, came up for consideration before Mr. Justice ROWLATT recently. If, in fact, neither of the two policies contains a clause agreeing to pay a rateable proportion of the claim, it is apparently obvious that the policies would destroy each other and leave the unfortunate insured without relief. From a position so completely opposed to natural justice an escape is offered in the words of Mr. Justice ROWLATT when he says that "the reasonable construction was to exclude from the category of co-existing cover any cover which was expressed to be itself cancelled by such co-existence, and to hold in such cases that both companies were liable, subject, of course, in both or either case, to any rateable proportion clause which there might be." In the case which his lordship was considering, *Weddell and Another* v. *Road Transport and General Insurance Co. Ltd.*, 75 SOL. J. 852, two brothers held motor-car insurance policies issued to them by different insurance companies. The policy of the first brother, J. R. WEDDELL, issued to him by the Road Transport and General Insurance Co. Limited, provided by cl. 4 that if at any time any claim arose under the policy, there was any other existing insurance covering the same loss, damage or liability, the company should not be liable to pay or contribute more than its rateable proportion of such loss, etc. Section 2 contained the customary provision that the company, at the request of the insured, would treat as though he were insured any relative or friend of the insured's while driving the motor car under certain conditions, and provided that such relative or friend was not entitled to indemnity under any other policy.

J. R. WEDDELL'S motor-car was in fact involved in an accident while being driven by the owner's brother,

L. W. WEDDELL, who held a policy himself issued by the Cornhill Insurance Company, Limited. By that policy the indemnity granted was extended to cover the insured while driving any private motor-car not belonging to him for pleasure or professional purposes if no indemnity was afforded the insured by any other insurance. At the time of the accident, therefore, L. W. WEDDELL was covered by both policies, but, doubtless by an oversight, he failed to comply with a material provision in the Cornhill policy requiring him to give notice of any accident or claim within three days, and on that ground the Cornhill Company repudiated liability for any damages he might be called upon to pay as the result of the accident. Thereupon his brother, J. R. WEDDELL, subsequently wrote to his insurers, requesting them to treat his brother as himself in the matter of the claim for damages which had been begun, but in their reply they repudiated all liability in respect of the claim. The matter went before an arbitrator, who held that the road transport company were liable to indemnify the driver of the car, L. W. WEDDELL, against one-half of all sums which he might become legally liable to pay as a result of the accident—being the rateable proportion as provided by cl. 4. This award, on a case stated, was affirmed by Mr. Justice ROWLATT.

It was true to say, pointed out his lordship, that the relative or friend was "not entitled to indemnity under any other policy" within the meaning of the Road Transport policy, and not "afforded indemnity by any other insurance" within the meaning of the Cornhill policy, while the other policy negatived liability where there were two policies. But at that point the process must cease, for if one proceeded to apply the same argument to the other policy and let that react on the policy under construction, one would, of course, reach the absurd result that whichever policy one looked at it was always the other one which was effective, which, as already pointed out, is tantamount to saying that neither is effective. The case is of considerable importance to insurance interests, and will undoubtedly clear away some of the misconceptions which have arisen in circumstances such as the present.

Company Law and Practice.

CXIII.

DISCLAIMER BY LIQUIDATOR.

"A TRUSTEE in bankruptcy has by statute, subject to certain conditions, a power to disclaim onerous property. No such power appears to be given to the official liquidator." Thus Lord ESHER, M.R., in *Graham* v. *Edge* (1888), 20 Q.B.D. 683, at p. 688. We have changed all that, after a decent interval of more than forty years, and a liquidator can now, subject to certain conditions, also disclaim onerous property of the company of which he is liquidator. This power is given him by s. 267 of the Companies Act, 1929, a section which appears to have been somewhat hastily snatched from the Bankruptcy Act; be that as it may, I do not propose to-day to deal *in toto* with the provisions of that section, but only if and so far as the decision in *Re Katherine et Cie, Limited* [1932] 1 Ch. 70, affects the method of looking at that section.

Certain persons granted, on the 1st June, 1928, a lease of some premises to Katherine et Cie, Limited, for a term of eight and a quarter years from the 25th March, 1928. Two guarantors were parties to the lease for the purpose of guaranteeing performance of the covenants and payment of the rent; a not unusual provision in the case of leases to companies. On 9th January, 1931, the company passed a resolution for voluntary winding up and for the appointment of a liquidator. The liquidator was desirous of disclaiming the lease, and he applied, in the voluntary winding up, for leave to do so. The lessors opposed the application, and, the registrar refusing to give the liquidator leave to disclaim, the liquidator appealed, and the matter came before MAUGHAM, J.

The ground for the opposition offered by the lessors to disclaimer was that their position would be prejudiced thereby, because it would determine the liability of the guarantors to pay the rent—there being authority to this effect in the case of bankruptcy (*Stacey* v. *Hill* [1901] 1 Q.B. 660)—for the reason that, the disclaimer operating to determine the term, it must also operate to determine the liability to pay rent, and therefore also the liability of the guarantor. This opposition is easily understandable; and it was held that the court, in deciding whether or not it will give leave to a liquidator to disclaim, will consider the interests of persons (besides the company and its creditors) who would be affected by a disclaimer.

"In my opinion," says the learned judge, at p. 78, "the court may properly balance the advantages and disadvantages of a disclaimer to be gained by the liquidator in the liquidation of the assets and by persons affected by the disclaimer." In the course of the hearing a good deal appears to have been said about the effect of s. 296 of the Companies Act, 1929. This section is the one which provides for the property of a company belonging to it immediately before its dissolution becoming *bona vacantia*: and thus altering the old law under which, in the case of leaseholds which were left vested in the company, the reversion was accelerated so as to bring the lease to an end (*Hastings Corporation* v. *Letton* [1908] 1 K.B. 378). Now, therefore, instead of the dissolution of a company without having disposed of its leaseholds giving the reversioner back his reversion earlier than he would have otherwise had it, it operates to vest the lease in the Crown as *bona vacantia*; whether the Crown will ever exercise its rights in respect of non-disclaimed leaseholds remains to be seen, but if it does not do so the reversioner will, if he have a power of re-entry, presumably exercise it and regain his property in that manner. If, however, the Crown is likely to exercise its rights under the section (though how it is to find out when any leaseholds vest in it it is not easy to say) it would seem that a further increase in the numbers employed in the civil service is likely, for there must be numbers of leases, especially at the present time, which cannot be looked upon as assets capable of being turned to any advantage by the liquidator.

What effect s. 296 can have on the construction of s. 267 is not, at first sight, apparent, for a liquidator has never, in the ordinary way, run the risk of becoming personally liable under a lease, in the same way that a trustee in bankruptcy has; and, as the learned judge pointed out, the operation of that section did not alter the conclusion that the refusal of the court to allow the disclaimer would not prejudice the liquidator in winding up the affairs of the company. It might, of course, result in there being a smaller dividend for the unsecured creditors by reason of a larger proof in the winding up by the landlord, though, in this particular case, the fact that there were guarantors available might make it unnecessary for the landlord to prove in the liquidation: the landlord cannot, of course, recover more than the full amount of his rent.

The principle that emerges from the case of *Re Katherine et Cie* is that every application by a liquidator for leave to disclaim must be considered on its merits, and that the interests of all persons interested must be considered: the interest of the liquidation not being inevitably the paramount consideration.

(To be continued.)

Mr. Michael Cartan O'Meara, solicitor, of Dublin, who died on 28th June, aged seventy-eight, left personal estate in England and the Irish Free State valued at £5,134. He left £100 to the Society of St. Vincent de Paul in Ireland; £100 to the Superioress of the Little Sisters of the Assumption, Camden-street, Dublin; £100 to the Superioress of the Sisters of Our Lady of Charity of Refuge, High Park, Drumcondra; and £50 to the Dublin Crèche or Day Nursery.

A Conveyancer's Diary.

The Validity of non-Charitable Trusts for the Upkeep of Tomb or Monument.

I left off last week at a point at which I had dealt with the authorities upon the question whether a a trust was valid which was not enforceable by any person in particular relation to trusts for the maintenance of animals or the upkeep of inanimate objects, except two cases, the decisions in which I said that I thought were really the only authorities upon which the decision in *Re Hooper* could be supported.

I now turn to the two cases referred to. In *Re Dean; Cooper-Dean* v. *Stevens* (1889), 41 Ch. D. 552, the facts were that a testator charged his real estates with an annuity of £750 payable to his trustees for fifty years if his horses and hounds should so long live, and he gave to his trustees his eight horses and ponies and also his hounds. The testator declared that his trustees should apply the said annuity in the maintenance of the horses and hounds for the time being living and in maintaining the stables, kennels and buildings inhabited by such animals in such condition of repair as his trustees might deem fit; but he declared that his trustees should not be bound to render any account of the application or expenditure of the sum of £750, and any part thereof remaining unapplied should be dealt with by them at their sole discretion.

It was held by North, J., that the £750 annuity was not given to the trustees beneficially, but that a trust was created for the maintenance of the animals, and that such a trust was valid, although it was not a charity, and its execution could not be enforced by any one.

It may be observed with regard to the judgment in this case that the learned judge relied upon *Mitford* v. *Reynolds* (to which I referred last week) and went in detail into the facts of that case and the history of the course which it took, from which it appears that it was before the court at least five times. Admitting that the real question in issue was not, according to any of the reports, discussed, his Lordship said: "It is impossible to suppose that, from the beginning to the end of these proceedings, whether the gift was good or bad was never brought to the attention of all the learned judges before whom the case came. I do not indeed find that any formal discussion took place upon it."

It appears to me that the learned judge assumed too much. However that may be, his Lordship certainly held that the trust in favour of the animals was valid although not enforceable.

Perhaps the best explanation of this case which can be made is that given in "Lewin on Trusts," 13th ed., p. 117 (repeating what was said in the earlier editions): "In *Cooper-Dean* v. *Stevens*, it is to be noticed that the testator bequeathed his horses and dogs to the trustees themselves, so that it could not be contended that any trust was enforceable against them by the owner of the horses and dogs. They appear to have held upon a trust for the maintenance of particular chattels belonging to themselves, but upon a resulting trust as to unapplied surplu."

I now come to *Pirbright* v. *Salwey* [1896] W.N. 86, the report of which is so short that I may as well set it out in full: "A testator after expressing his wish to be buried in the inclosure in which his child lay in the churchyard of E, bequeathed to the rector and churchwardens for the time being of the parish church £800 consols, to be invested in their joint names, the interests and dividends to be derived therefrom to be applied, so long as the law for the time being permitted, in keeping up the inclosure and decorating the same with flowers: Held that the gift was valid for at least a period of twenty-one years from the testator's death, and *semble*, that it was not charitable."

That is the whole report.

In *Re Hooper* no reference was apparently made to *Re Dean*, and certainly Maugham, J., based his judgment entirely upon *Pirbright* v. *Salwey*, which does not strike me as being very satisfactory. If the same point came before the Court of Appeal I should expect *Pirbright* v. *Salwey* to be overruled.

So far I have not dealt with the question of the application of the perpetuity rule. That is our second question.

"A perpetuity, in the primary sense of the word, is a disposition which makes property inalienable for an indefinite period" ("Jarman," I, p. 248). A devise or bequest for the maintenance of a private tomb is undoubtedly void as creating or tending to create a perpetuity. The authorities on that point are quite clear (see, e.g., *Hoare* v. *Osborne* (1886), 1 Eq. 585). If, however, the tomb be part of the fabric of a church the gift is charitable and therefore good.

In *Re Hooper*, therefore, the gift was *primâ facie* void, except that part which provided for the upkeep of the tablet and window in the church.

The third of our questions then remains—whether the expression "so far as they legally can do so" is sufficient to take the gift out of the rule, making it one which can only be applied within the perpetuity period.

There is authority on that point. Such expressions will not suffice to render valid trusts which would otherwise offend against the perpetuity rule (see *Christie* v. *Gosling* (1866), L.R. 1, H.L. 279; *Re Harcourt, Portman* v. *Portman* [1921] 1 Ch. 187).

It is true that at first sight *Harrington* v. *Harrington* (1871), L.R., 5 H.L. 87, seems to be an authority to the contrary, but as Eve, J., pointed out in *Re Harcourt*, that case shows that the words "'so long as the law permits' may be used in a case of doubt in aid of a construction which will not be obnoxious to the rule against perpetuities but is not an authority that the words are effective to correct a gift which in terms infringes the rule."

It seems to me that the words used in *Re Hooper* did, in fact, purport to create a trust which infringed the perpetuity rule and that the gift upon trust for the maintenance of the inanimate objects (not being part of the fabric of the church) was void, notwithstanding the decision in *Pirbright* v. *Salwey*, and (so far as it could be applied) that in *Re Dean*.

It might be said, of course, that in *Re Hooper* there was a discretion given to the trustees which might render the gift valid, at any rate, to the extent to which the discretion was exercised. The gift was not only "so far as they legally can do so," but also "in any manner that they may in their discretion arrange." I do not think that that makes any difference, although it may be that, in such a case, as against residuary legatees, the trustees might be able to say that, although not bound to do so, they are entitled to carry out the trust for a period not exceeding twenty-one years from the death of the testator—but I doubt it.

If I am right in the view which I take, the only ground upon which the decision in *Re Hooper* might be supported is that the non-charitable trusts in the will in that case were not executed but executory, and that, being executory, the court would carry them into effect in such a way as to give effect to the testator's intention, so far as might be, without infringing the perpetuity rule.

I can find nothing in the report to justify the decision on that ground. On the contrary, the learned judge appears to have relied solely upon the authority of *Pirbright* v. *Salwey*, which, so far as one can tell, was not a case of an executory trust. At any rate, if that were the ground of the decision, it is very strange that his Lordship did not say so.

Mr. Hugh Vaughan Peirs (seventy-six), of Carshalton, Surrey, solicitor, left estate of the value of £39,246, with net personalty £37,245.

Landlord and Tenant Notebook.

Landlord and Telephone.

By the Telegraph Act, 1863, s. 21 (1), the company "shall not . . . place any work . . . in, upon . . . any land or building, except with the previous consent in every case of the owner, lessee, *and* occupier of such land or building . . ." This statute was passed before telephones had been invented, but the decision of the Exchequer Division in *Attorney-General* v. *Edison Telephone Co. of London Ltd.* (1880), 6 Q.B.D. 244, makes it clear that in law a telephone is a species of telegraphic instrument and not, as was contended by the defendants' witnesses, merely an elaborate speaking trumpet. (The information was for a declaration that the defendants had infringed the monopoly conferred by s. 4 of the Telegraph Act, 1869, for an injunction, and an account.) Indeed, the Telegraph Act, 1899, which was the first statute to mention the telephone, or rather "telephonic communication," proceeds on this assumption.

The interpretation section of the 1863 Act, s. 3, does not define the term "work" exhaustively, but contents itself with saying that it includes "telegraphs and posts." The Telegraph Act, 1868, by s. 2, incorporates the former Act and enacts that "the term 'the company' shall, in addition, etc., mean the postmaster-general."

It may well be that Parliament intended to put "or" when it put the "and" which I have italicised in citing s. 21 (1) of the Act of 1863. In other sections dealing with similar rights the word "or" appears, and one text-book (possibly owing to a misprint) substitutes "or" for "and" when setting out the section. But until remedial legislation is passed, or *A.-G.* v. *Edison Telephone Co. of London Ltd.* over-ruled, the position of a tenant who wants a telephone while his landlord objects is an awkward one. I propose briefly to discuss the rights and duties as between landlord and postmaster-general, as between tenant and postmaster-general, and as between landlord and tenant.

In practice, the postmaster-general has installed thousands of telephones in demised premises without troubling about the owner's consent. In so doing, he has not committed trespass, as no injury has been occasioned to the reversion: see *Cooper* v. *Crabtree* (1882), 20 Ch. D. 589, C.A., in which the erection of hoardings on premises let to a weekly tenant was held to give the lessor no cause of action.

But it does appear to be a case of breach of statutory duty, and not a question of a "statutory difference" within the meaning of the Telegraph Acts, to be referred to a special tribunal. If that were so, no court would grant an injunction. But these "statutory differences," though their scope has been extended by the Telegraph Act, 1892, s. 3, and the Telegraphs (Construction) Act, 1908, s. 2, appear to arise only when there is an objection to works on streets and roads, and "over, along or across" adjoining buildings, as mentioned in the *proviso* to s. 21 (1) of the 1863 Act, or a dispute as to adjusting works, etc., when a building involved is reconstructed, as provided for by the third sub-section.

There is, perhaps, one ground on which the authorities could fall back if an injunction were sought. Changed conditions were taken into consideration in the case of *Powell Duffryn Steam Coal Co.* v. *Taff Vale Rly Co.* (1874), 9 Ch. App. 331, when the plaintiffs asked for an injunction to enforce their statutory right, under the Railways Clauses (Consolidation) Act, 1845, s. 92, to use the railway with "suitably constructed carriages," etc., of their own, on "payment of the proper tolls." The court recognised the fact that in 1845 a railway was still regarded as a species of turnpike road, but also took cognisance of subsequent developments, and refused an injunction. The judgments refer, however, to the principle that a continuous act will not be ordered and to the danger, and not merely to the inconvenience, to which the public would be exposed if the order were made without providing for continuous working of signals and points; and in this respect the circumstances differ from those surrounding the withholding or removal of a telephone.

As between tenant and Postmaster-General, the contract at present used protects the latter by giving him the right to determine the agreement summarily, remove apparatus if unable or unwilling to obtain or maintain any licence, permission, etc., necessary to the construction or maintenance of the installation (General Conditions, Clauses 8 and 12).

There remains the question of the rights and duties of landlord and tenant. There is, of course, under ordinary circumstances no implied contractual obligation on the landlord to consent to the installation of a telephone. The qualification of a tenant's covenant not to effect structural alterations without the consent of the landlord by a proviso that such consent is not to be unreasonably withheld could not be read as depriving the landlord of a right to refuse consent to another party, even if that other party enjoys the monopoly of effecting alterations of that nature. But, leaving on one side the rights created by privity of contract, I suggest that under given circumstances the landlord who refused the consent would thereby derogate from his grant, and thus commit a breach of a right created by privity of estate.

The doctrine of derogation from grant, which is, as was said by Bowen, L.J., in *Birmingham, Dudley & District Banking Co.* v. *Ross* (1888), 38 Ch. D. 295, C.A., older than the Year Books if not as old as the hills, provides that a man cannot give a thing with one hand and take away the means of enjoying it with the other. The doctrine has perhaps suffered in reputation by having been invoked in a number of cases in which it could not apply. This may have had the further effect of retarding its development, for, in spite of its antiquity, "the real difficulty is to ascertain how far its implications extend" (Parker, J., in *Browne* v. *Flower* [1911] 1 Ch. 219), and "the obligation imposed may be infinitely varied in kind" (Younger, L.J., in *Harmer* v. *Jumbil (Nigeria) Tin Areas Ltd.* [1921] 1 Ch. 200, C.A.). It can, however, be taken as settled that there must be something in the nature of frustration of purposes which were in the contemplation of both parties at the time of the grant (*Lyttelton Times Co.* v. *Warners Ltd.* [1907] A.C. 476), and that a mere reduction of profits in itself will not provide a cause of action (*Dare* v. *Bognor U.D.C.* (1912) 28 T.L.R. 489, C.A.). The fact that derogation has generally consisted of user of adjoining land would not be so great an obstacle as the fact that the doctrine would have to be applied to a negative act (though in Ireland, in the case of *Anderson* v. *Cleland* (1910), 2 Ir. R. 334, C.A., some of the judgments proceeded on the basis that failure to maintain a reserved culvert was a derogation from grant). But under suitable circumstances, *e.g.*, where the telephone is vital to business carried on, and which the lessor knew would be carried on, on the premises, refusal of the consent required by the Telegraphs Act, 1863, s. 21, might well be held to constitute derogation from grant.

Our County Court Letter.

COMPANY'S LIABILITY FOR "HOLDING-OUT."

A COMPANY is not necessarily liable for an order given at its registered office, as shown by the recent case of *James Durie and Co., Ltd.* v. *Woodhouse Electric Picture Lounge, Ltd.*, at Leeds County Court. The claim was for £6 16s., as the price of goods sold, but the latter were alleged by the defendants to have been ordered on behalf of another firm, to whom the exhibiting rights had been let. The plaintiffs contended, however that (1) the senior partner in that firm was an ex-manager of the defendants; (2) he had given the order at their registered office: (3) the defendants were therefore estopped from denying that he was their servant. His Honour

Judge Woodcock, K.C., observed that the doctrine of estoppel applied if any person (either by his acts or statements) led a third party to believe that another person was his agent, even if that other person was not intended to obtain credit from the third party. It did not follow, however, that a brass plate (indicating the registered office of the defendants) justified the plaintiffs in their contention, viz., that anyone who happened to be on the premises, in apparent control, was the servant of the company. The plaintiffs had thus made the contract at their own risk, as they should have ascertained who the giver of the order was, and for whom he was acting. Judgment was therefore given for the defendants, with costs.

THE ENFORCEABILITY OF PRINTED CONTRACTS.

Two recent cases illustrate the difficulty of the above problem. In *Virtue & Co.* v. *Lancaster*, at Liverpool County Court, the claim was for the price of a book on insurance, supplied in accordance with an order form signed by the defendant. Liability was disputed on the ground that the plaintiff's traveller (having produced a small extract dealing with industrial insurance) had represented that the book was largely devoted to that branch of the subject, whereas only about two pages (out of a total of 500) dealt with the aspect which interested the defendant, who was an agent for an industrial insurance company. It was pointed out for the plaintiffs that no less than eighty employees of one company had bought the book, without complaint, and His Honour Judge Dowdall, K.C., observed that the book was undoubtedly good, but it was nevertheless not what the defendant had ordered, and he was justified in returning it. Judgment was also given for the defendant in four other similar cases, with costs.

A contrary result was reached in *Mann, Egerton & Co., Ltd.* v. *Allen*, at Bury St. Edmund's County Court, in which the claim was for £4 13s. 7d. for goods supplied and work done, and the counter-claim was for £61 2s. 3d. for breach of warranty of a 1922 15 h.p. Wolseley car. The latter had been bought for £70 by the defendant, who had signed an order form containing the proviso that "no guarantee is given with second-hand cars . . . and the purchaser must satisfy himself on all points." It was contended on his behalf, however, that this was a mere order form (for the purpose of complying with the plaintiffs' system of book-keeping) and that there had been a prior verbal agreement, which included a warranty that the car was sound and reliable, whereas it was only worth about £15. The plaintiffs' case was that the defendant drove the car on a trial run, and could have had it overhauled by an expert, but was content with an examination made by his sons. The salesman denied that the defendant was unduly pressed to buy, or that the order form was folded up when he signed it. His Honour Judge Hildersley, K.C., observed that (1) fraud was not pleaded, although it had in fact been alleged in evidence; (2) the breach of warranty was not alleged until the plaintiffs sued for the goods; (3) the defendant had not discharged the onus of proving that the signed document was not binding upon him. Judgment was therefore given for the plaintiffs for £1 8s. 7d. (after an allowance of £3 5s. for a clutch centre) and the counter-claim was dismissed, with costs.

Compare the "County Court Letter" under the above title in our issue of the 27th December, 1930 (74 Sol. J. 858).

Mr. Ernest R. Still, of Windfield, Leatherhead, solicitor, a director of the Imperial Tobacco Company, left estate of the value of £177,400, with net personalty £171,110. He gave £2,000 and £3,000 a year to his wife; £200 to the Solicitors' Benevolent Association; £500 for the repair of the fabric of Leatherhead Parish Church; £500 towards the proposed Guildford Cathedral. Testator left the ultimate residue of the property between his children.

Reviews.

Bills of Costs. By James E. Thomas, LL.B., Barrister-at-Law, assisted by R. G. Clark. 1932. Royal 8vo. pp. 747 (with Index). London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 42s. net.

It is estimated in commercial circles that the book-keeping and clerical services involved in credit trading add something approaching 25 per cent. to the selling cost, and it can be confidently asserted that in no business or profession is the seller of a commodity, be it goods or services, involved in greater labour or cost in recording his "sales" than is the solicitor.

The archaic system of remuneration for items of detail (usually performed by a clerk), leaving the executive direction of the principal to go unremunerated directly, is largely responsible for the disproportionate length and complexity of solicitors' bills of costs.

We know of a solicitor who, having delivered a lump sum bill for £5 5s. and being asked by his client to itemise it, furnished the following:—

"To doing your job of work	£1	1	0
"To knowing how	4	4	0
	£5	5	0"

Such a bill, though it recognises what the client is really paying for, will not, however, satisfy the Taxing Office, and it can in truth be said that the factor that makes the difference between a practice providing a decent living and one affording a mere pittance is more often than not the efficiency or otherwise of its costs department.

The number of text-books on costs already published is an indication of the demand that exists in every office for a specialised guide to the form in which the solicitor's remuneration is assessed in each different branch of practice, for those forms are many and without apparent correlation.

We are told that all precedents should be our servants and not our masters, but the costs precedent can be more safely adopted with faithful servility than can precedents in other fields.

"Bills of Costs" is to be commended for a simplicity and clarity of arrangement that distinguishes it from some of its forerunners, and in particular for its admirable and well-arranged precedents.

These are tabulated in the form of bills of costs with double columns for disbursements and profit items, and afford the costs draftsman practical examples of costs in almost every possible set of circumstances, both litigious and non-litigious.

The inclusion of the various fee orders is useful and furnishes a check on the disbursement ledger, while the insertion of scales for the various conveyancing charges, stepped every £50, is a boon to those of us whose mental arithmetic is somewhat halting.

The Appendix contains some excellent precedents and other information relating to Rating and Valuation Appeals.

Concerning the index, the author makes in his preface an acknowledgment of domestic assistance. A full index is invaluable to a work such as this, and the collaboration has produced "the goods."

Altogether a sound practical book from which non-essential matter has been rigorously excluded in order to condense into a single volume all that will most usually be required.

Russell on the Power and Duty of an Arbitrator and the Law of Submissions and Awards. Twelfth Edition. By V. R. Aronson, M.A., B.C.L., of the Inner Temple, Barrister-at-Law. Large 8vo. pp. lx and (with Index) 751. London: Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd. 42s. net.

A new edition of this well-known work will be welcomed by the profession, especially as it is edited by one who is an

authority of repute on this branch of the law. It is sufficient to say that the new edition is worthy of its predecessors and brings the law on this important subject up to date. All the recent authorities are dealt with, e.g., *Hirji Mulji* v. *Cheong Tue Steamship Company, Ltd.* [1926] A.C. 497, where the "frustration" of a contract was considered and, on a point of practice with regard to appeals, *Simbro Trading Co.* v. *Posograph (Parent) Corporation* [1929] 2 K.B. 266. We are told in the preface that: "There is included in this edition for the first time a chapter giving a short résumé of the law relating to arbitration in a number of foreign states." In fact the book is not divided into chapters, and the index did not help us to find the "chapter" referred to. However, in s. 2 of Pt. II we found what we were looking for, and very interesting it is. The table of contents does not correspond with the arrangement of the text. There is, for example, no reference in the table to "Part I" or "Part II."

In an appendix the learned editor sets out some well-chosen extracts from the report of the Mackinnon Committee on Arbitration published in 1927. However instructive and interesting the report of that committee may be to the student of the subject, there does not seem to be much prospect of legislative effect being given to its recommendations. The make-up and printing of the volume are very good. The index might be better.

Principles of Mercantile Law. By J. CHARLESWORTH, LL.D. (Lond.), of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Second Edition. 8vo. pp. xxxvi and (with Index) 375. 1931. London: Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd. 8s. net.

A second edition of this work should receive a warm welcome from all desiring to obtain a general view of the principles embodied in commercial law. Each of the subjects dealt with is expounded with admirable clarity and concision. We note that the learned author touches a point which has been very generally ignored by other text-book writers, namely, that involved by the display by a shopkeeper of an article in his window with a ticket stating the price. Does this constitute an offer which a customer can accept and so conclude a binding contract? The act of the shopkeeper, as is pointed out, is not an offer in the sense that its acceptance by the customer transforms it into a contract; it merely amounts on the part of the shopkeeper to an invitation to the public to make offers. It is curious that there is so little authority on this elementary question. Besides incorporating the numerous recent decisions, this edition includes a useful chapter on bailment, pawn, and lien. The classes of bailments are clearly set out and also the legal obligations arising in each case. To these it might have been useful to add a note on what has sometimes been called, although not very accurately, involuntary bailment; that is, the position in law where, say, goods have been delivered to a person who has not ordered them. Several cases on this have come before the courts, but there seems to be a general haziness on the part of the laity as to the legal position created by this co-called bailment. We heartily commend Dr. Charlesworth's book.

Justice of the Peace. A manual for the use of Justices of the Peace in Scotland. By JAMES WALKER, M.A., Advocate. 8vo. pp. xi and (with Index) 272. 1931. Edinburgh and Glasgow: Wm. Hodge & Co., Ltd. 10s. 6d. net.

This manual should prove of great utility to Scottish justices of the peace whose needs in the way of literature affecting their status and duties have scarcely received adequate attention in recent years. As the learned author says, the older treatises on the office and duties of justices besides being long out of print are also to a large extent out of date; indeed, it may be said that any book on such a subject soon becomes antiquated so prolific is nowadays the crop of legislation touching matters which come within the ambit of the justice's jurisdiction. Mr. Walker's book is a compact treatment of the various aspects of the subject, dealing in short and clearly written chapters with the justices and their officers, the sessions of the peace, an historical survey of functions, the powers and duties of individual justices, justices in common sessions, the justices' small debt court, the justices in quarter sessions, the justices as licensing authority, and, lastly, the responsibility and immunities of justices. In Scotland the justice of the peace has never held so important a place in the life of the country as his English *confrère*, so far at least as he is regarded as a judicial functionary, this being largely owing to the fact that the sheriff, sitting as a court of summary jurisdiction, discharges most of the duties which in England fall to justices in petty sessions; but while the judicial duties of the Scottish justice are light he is occasionally called upon to discharge them and he will find in Mr. Walker's book, with its full appendix of statutes, ample guidance on the points with which he is likely to be called upon to deal.

Principles of the Law of Contracts. By S. MARTIN LEAKE. Eighth Edition. By R. R. A. WALKER, of Lincoln's Inn, Barrister-at-Law. ccxciv and 1,088 pages. £2 5s. net. London: Stevens & Sons, Ltd.

If for no other reason, the profession owes Mr. Walker a debt of gratitude for having restored to us our marginal notes, the omission of which from standard text-books is undoubtedly a mistaken form of economy, and one which, let us hope, will finally be abandoned now that the trail has been once more blazed. But it is chiefly by reason of his careful and conscientious editing of this book that we are in the editor's debt; the task of bringing up to date a work such as this is no light one, but it has been well done, and gives us a book which will be a useful addition to the stock-in-trade of every lawyer. From the practical point of view, one criticism may legitimately be offered: the table of cases is printed in large clear type and runs into more than 280 pages, which makes the volume somewhat bulky; without any appreciable sacrifice of legibility it might be very considerably compressed, with corresponding advantage to those of us whose grip is not what is was.

Marriage in Church, Chapel and Register Office. By ARTHUR S. MAY, M.A., Surrogate of Ecclesiastical Courts in Doctor's Commons. London: Longmans, Green & Co. 3s. 6d.

The re-issue of Mr. May's excellent little work brings its matter fully up to date by means of an appendix, which notes, page by page, the changes in the law since 1920, when it was first published. It belongs to what one may call the semi-technical class of legal literature—comprehensible to the layman and extremely handy for the lawyer who requires a bird's-eye view of a branch of the law too little known to the general practitioner. Therefore the only regret one feels is that the index of barely two pages is far too brief to constitute a helpful guide to the closely-packed pages.

Books Received.

Williams' Bankruptcy Practice. Fourteenth Edition. By WINTRINGHAM NORTON STABLE, M.A., and JOHN BASIL BLAGDEN, M.A., Barrister-at-Law. 1932. Royal 8vo. pp. 1,088 (with Index). London: Stevens and Sons, Limited; Sweet & Maxwell, Limited. £2 10s. net.

Chitty's Annual Statutes. 1932. Vol. 27. Part II. By THEODORE JOHN SOPHIAN, Barrister-at-Law. Royal 8vo. pp. xxxvi and 370. Index 38 pp. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 15s. net.

Paterson's Licensing Acts. Forty-second Edition. 1932. By HARRY BAIRD HEMMING, LL.B., Barrister-at-Law, and S. E. MAJOR, Solicitor. Demy 8vo. pp. cxviii and 1,322, Index pp. 160. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. 22s. 6d.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Administration—Threatened Breach of Condition of Bond—Remedy of Surety.

Q. 2389. We have a client who some little time ago became surety for an administratrix. It has come to the knowledge of our client that the administratrix is retaining the whole of the property for her own benefit and has expressed her intention of not distributing the available assets in accordance with the A. of E.A., 1925, and has not obtained the consent of the whole of the beneficiaries entitled, to her action. We understand the administratrix has no assets of her own other than the share she is entitled to in the administration. Our client is (1) desirous of knowing if he can cancel the bond, and to this we have replied in the negative; (2) what course of action he can take to compel the administratrix to deal with the estate in a proper manner. To the last question we have failed to find any law in our text-books and should be glad if you can assist us.

A. (1) We, of course, agree with the advice given to the effect that the surety cannot cancel the bond.

(2) The sureties can start an action for administration and apply for the appointment of a receiver and an injunction to prevent the mis-application of the estate upon the mere threat to mis-apply. See *Re Anderson-Berry: Harris* v. *Griffiths* [1928] 1 Ch. 290. The normal consequences of a breach of the condition of the bond are provided for by ss. 81-83 of the Court of Probate Act, 1857.

Non-Charitable Gifts to Perpetual Institutions—Validity of.

Q. 2390. How are the decisions on the validity or otherwise of non-charitable gifts reconciled? In the case *Re Prevost: Lloyds Bank, Ltd.* v. *Barclays Bank, Ltd.*, Mr. Justice Eve decided that a gift to the London Library for the general purposes of the institution was valid. Although not a charity, the gift did not offend the perpetuity rule, as the corpus of the gift might be spent, and the gift was therefore valid. The same judge, however, in *Re Jackson: Midland Bank Executor and Trustee Company* v. *Archbishop of Wales*, held that a legacy to the archbishop towards the general fund of the Church in Wales or in his discretion in any manner for helping to carry on the work of the Church in Wales, was not valid as it was not entirely charitable. It appears that this gift was not necessarily perpetual, as the archbishop might expend the corpus of the gift, yet it was held not to be valid. It is quite clear that a non-charitable gift is invalid if a perpetuity is created, but in many cases similar to the *Archbishop of Wales' Case* there appears to be no restriction on the expenditure of the corpus, and the question on which we require authority is to define the distinction between gifts which are valid because they do not offend the perpetuity rule, and gifts which are invalid because they do offend that rule. For example, a gift of £100 to the trustees of a Conservative club to be applied for the general purposes of the club at the absolute discretion of the trustees of the club, appears to us to be valid as not offending the perpetuity rule, and we shall be glad of your opinion.

A. In the former case (*Re Prevost: Lloyds Bank Ltd.* v. *Barclays Bank Ltd.*, 74 Sol. J. 488) both real and personal property were concerned, and in the course of his judgment Eve, J., said, that it was conceded that the testator's suggestions created no trust and the validity of the bequest of the personal estate was not seriously impeached. The remainder of the judgment is concerned with the real estate included in the bequest. In the latter case (*Re Jackson: Midland Bank Executor and Trustee Co.* v. *Archbishop of Wales*, 46 T.L.R. 558) personalty only was concerned, and it was held that the legacy was not valid because it was in the power of the Archbishop to apply the bequest for a non-charitable purpose. In the former case there was no trust, but in the latter case there was a trust not wholly charitable. Byrne, J., said in *Re Clarke* [1901] 2 Ch. 110, at p. 114: "It is, I think, established by the authorities that a gift to a perpetual institution not charitable is not necessarily bad. The test, or one test, appears to be, will the legacy when paid be subject to any trust which will prevent the existing members of the association from spending it as they please? If not, the gift is good." If a fund may be spent at the absolute discretion of the components of the perpetual body no question of a perpetuity arises; the fund is freely alienable. If however there is a restraint upon alienation, direct or consequential, then there is a tendency towards a perpetuity and the gift is void. In the case of the Archbishop of Wales, the fund was not in his absolute discretion, as it would have been if it had been given to him (say) to be applied at his discretion in and about his holy office, and thus if not good as a charity was not good as a gift of the class of which *Cocks* v. *Manners* (referred to by Eve, J., in *Re Prevost*, *ubi supra*) is the leading authority, that is to say, that class in which alienability is the test. We agree that an unrestricted legacy of cash to a club is good. In *Re Patten: Westminster Bank* v. *Carlyon* [1929] 2 Ch. 276, a case of a gift of a cash legacy to a club, there were trusts, but the inference is that if the gift had been for the general purposes of the club, the gift would have been held good.

Validity of Election of Aldermen.

Q. 2391. After the election of mayor at the annual meeting of a corporation (incorporated by charter) at which the election of retiring aldermen was to take place, it was announced that the mayor was likely to be proposed for the office of alderman, and that the chair must consequently be taken by one of the aldermen not due to retire. This was done, and the election of aldermen resulted in four nominees tying for two seats. The chairman thereupon gave a casting vote for two of the candidates (including the mayor) who were declared by the chairman to be duly elected. One of the standing orders of the corporation in question and also r. (11) in the second schedule to the Municipal Corporations Act, 1882, read as follows: "In case of an equality of votes, the chairman may give a second or casting vote." Rule (9) in the same schedule outlines the procedure to be adopted in the absence of the mayor. Information is desired upon the following points, namely: (1) As the mayor was not absent, does the said r. (9) apply. If so, should the council have been given the opportunity of appointing the deputy mayor under that rule before proceeding to the election of an alderman, as chairman. (2) If r. (9) does not apply, kindly give the authority (if any) for electing an alderman to the chair. (3) As an alderman has not an original vote for the election of aldermen, was the chairman in order in giving a casting vote. (4) If the election of the two aldermen is bad, please refer briefly to the procedure to have it quashed.

A. (1) As the mayor was not absent, r. (9) did not apply, and no question arose of appointing the deputy mayor as chairman. (2) The Municipal Corporations Act, 1882, s. 67 (1), authorises the election of an alderman to the chair, if the mayor is incapable of acting. (3) The above Act, s. 60 (6) enabled the chairman to give a casting vote, although not entitled to vote in the first instance. (4) The election was valid, and there are no grounds for applying for a mandamus to hold a fresh election.

Commission Agent as Workman.

Q. 2392. X.Y.Z. are a firm carrying on business as grain and feeding stuff merchants and manure manufacturers, and A is employed by them as a traveller to obtain orders for the sale of their goods, and, if the customer so wishes, to receive payment therefor. The goods so ordered are despatched by X.Y.Z. direct to the customer. A is not required to give any definite amount of his time to obtaining orders and is allowed to exercise his discretion as to the time and manner in which he works: in addition, he is at liberty to seek orders for other grain, etc., merchants. The only remuneration A receives from X.Y.Z. is a commission on all orders obtained by him, but X.Y.Z., at their own expense, take out for A a yearly contract omnibus ticket for the district A usually travels. The amount of commission paid to A has in the past averaged about £270 per annum, and either party is at liberty to determine the employment at any time. Will you please advise:—

(*a*) Is A a "workman" within the meaning of the Workmen's Compensation Acts (see hereon *R.* v. *Walker*, 27 L.J. [M.C.] 207; *R.* v. *Tite*, 30 L.J. [M.C.] 142; and "Halsbury's Laws of England," vol. 20, p. 66).

(*b*) If not, is there any, and, if so, what, liability on X.Y.Z. if A is injured whilst canvassing for orders for X.Y.Z.?

A. The question of a commission agent's right to workman's compensation depends upon findings of fact, e.g., as to the character and terms of the employment, the powers of dismissal, and controlling the work of the employee, and his mode of remuneration. Guidance upon these points may be obtained from the judgments of the Court of Appeal in *Hobbs* v. *Royal Arsenal Co-operative Society* (1930), 23 B.W.C.C. 254. A is not excluded from the definition of "workman" by the amount of his earnings, but, from the evidence, he is less subject to control than the applicant in the above case. The strongest argument in his favour is that the firm of X.Y.Z. take out his season ticket, but this appears to be part of his remuneration, and is insufficient to rebut the inference that he is not a workman. Both questions are therefore answered in the negative.

Annuity Free of Income Tax—Recovery of Tax.

Q. 2393. A testator, X, by his will, bequeathed to his two nieces, A and B, and the survivor of them, an annuity of £50 "clear of all death duties and income tax." The will contained a direction to the trustees to appropriate a portion of the testator's estate and to invest it so that the annual income of the appropriated fund would be sufficient to meet the annuity. In pursuance of this direction the trustees appropriated part of the testator's personal estate and invested it in a trustee security, income tax in respect of which was deducted from the income at the source, so that only a net income from which tax had been deducted came to their hands. It is clear that under the direction in the will the annuitants are entitled to have the annuity paid to them free of income tax—*Re Bannerman*, 21 Ch. D. 105, decides that such a direction contained in a will is valid. Under the particular circumstances of the case, however, the appropriated fund produces income in respect of which tax has been deducted at the source. The power of appropriation contained in the will includes, *inter alia*, the following clause: "And I declare that if the annual income of the appropriated fund shall at the time of appropriation be sufficient to satisfy the said annuity such appropriation shall be a complete satisfaction of the trust or direction hereinbefore declared to provide for such annuity." Under these circumstances, what are the precise duties of the trustees with respect to the annuity? Ought they to appropriate a larger sum sufficient to produce a net income of £50 a year after tax has been deducted, or, on the other hand, is it their duty to reclaim the tax deducted from the authorities and pay it over to the annuities, the estate itself being liable for the amount of tax so deducted? It is, we think, undeniable that the annuitants are entitled to an annuity of £50 net.

A. A and B are entitled in the first instance to the net yearly sum of £50, and if an investment in respect of the income of which tax is deducted at the source appropriated it should be of such amount as to yield £50 net. Each of the two, A and B, is, however, bound to return to the trustees for the benefit of the residuary legatees such amount of tax recoverable by her from the Inland Revenue as bears the same proportion to the total tax recoverable by her as her share of the annuity (calculated at the gross value) bears to her total income. If her total income is so small that she pays no duty, she must return the whole tax: *Le Fevre* v. *Pettit* [1922] 2 Ch. 765. If the trustees collect and hand over the income, they can deduct each year from the amounts payable to A and B respectively the amount returnable by each for the preceding year.

Effect of Limitation prior to 1926 to Two "in Fee"—Transitional Provisions of L.P.A., 1925.

Q. 2394. In 1919 A conveyed a house to hold unto and to the use of B and C "in fee" as joint tenants (the word "simple" being omitted). The conveyance contained a recital that A had contracted with B and C for the absolute sale to them as joint tenants of the property and the inheritance thereof in fee simple. We are acting for the purchaser, and shall be glad to know whether, in view of the decision in *Re Ethel and Mitchell's and Butler's Contract* [1901] 1 Ch., you consider that the conveyance passed the legal estate to B and C, and, if not, whether the outstanding legal estate was got in by virtue of the Law of Property Act.

A. The case cited in the question is authority for the proposition that if the words of art introduced by C.A., 1881, s. 51, to supplement the common law forms of limitation were used, they were to be used in their entirety and exactly, failing which the position was as if no words of limitation were employed. If, prior to 1926, lands were conveyed to B and C without further words, they became at once joint tenants for life ("Williams on Real Property," 21st ed., p. 136, citing Litt., s. 283: Com. Dig. tit. Estates (K.1.)). We therefore express the opinion that the effect of the conveyance of 1919 at law was to render B and C joint tenants for life, and to leave the remainder in fee simple in A. In view of para. 7 (*j*) of L.P.A., 1925, Sched. I, Pt. II, we think it is very doubtful whether the transitional provisions of that Act got in the outstanding legal estate.

Recovery of Arrears of Rent.

Q. 2395. A is the owner of a cottage of which B has for some years past been a yearly tenant at the annual rent of £3 5s. payable at Michaelmas. The tenant is protected under the Rent Restrictions Acts, and there is no written agreement. In February, 1931, B, who is a very old man, was taken to an infirmary suffering from senility, but he has never been certified as insane. On his removal, the house was locked up with the furniture inside, and the key was taken away, the same being now in the possession of B. The rent has not been paid, and we have been in correspondence with various officials of the county council in whose area the infirmary in question lies, with a view to obtaining the key for the purpose of distraining on B's furniture. The officials inform us that B refuses to

part with the possession of the key, that the probable duration of his illness is stated by the doctor to be indefinite, and that they are unable to assist A in any way.

(1) What steps are open to A to obtain the arrears of rent ?

(2) Can distraint be made without obtaining possession of the key of the cottage, and if so, how ?

(3) In the circumstances, can possession of the premises be obtained through the court or otherwise without having to serve the usual six months' notice to quit, expiring at next Michaelmas ?

A. As the outer door may not be broken open (*Seymayne's Case* (1604), 5 Co. R. 91), and there is no proviso for re-entry for non-payment of rent, the procedure under the County Courts Act, 1888, s. 139, is not open to A. Therefore—

(1) A must proceed under the above Act, s. 138, after having served notice to quit expiring next Michaelmas.

(2) Distraint cannot be made without obtaining possession of the key.

(3) No, see Answer (1), *supra*. If, however, the rent of £3 5s. does not include the permitted increases, a statutory notice of increase should be given under the Rent, etc. Act, 1923, s. 1 (1), and notice to quit will be unnecessary. See *Aston* v. *Smith* [1924] 2 K.B. 143.

Specific Bequest of Leaseholds—Incidence of Outgoings from Date of Death to Date of Assent.

Q. 2396. A, who died recently, by his will left his leasehold dwelling-house and the contents thereof to K absolutely. A's executors anticipate that three or four months will elapse before the will is proved, and they desire to know whether it is the deceased's estate or the beneficiary that will have to pay the outgoings connected with the said dwelling-house from the date of A's death until the executors assent to the bequest. The house is at present unoccupied and locked up, but as it contains the deceased's furniture the rates (the main item of the outgoings) are accruing and will have to be paid.

A. In view of the fact that an assent, unless a contrary intention appears therein, relates back to the date of death, we express the opinion that the beneficiary will, if the assent does not provide to the contrary, be liable for the outgoings from the date of death. It is not unusual for the deceased's residence to be kept open for a short while after his death at the expense of his residuary estate for the convenience of his widow, etc., and if that was done in this case it would appear equitable to provide that the assent shall only relate back to the date when the house was closed.

Assent by Administrator to Vesting of Equitable Interest in Himself as Surviving Spouse.

Q. 2397. A was entitled to two-thirds of a freehold house, and B, his wife, to one-third. They therefore held as joint tenants on statutory trusts. B died recently, intestate, and A has taken out letters of administration to her estate. B's estate is under £1,000, and therefore belongs to A. Is any assent or other document necessary to vest in A the equitable interest in the one-third ?

A. An assent in writing is only necessary to pass a legal estate, and it is considered that a purchaser could be compelled to accept a title from A on (1) due proof that B's total estate was sub £1,000, and (2) A's statement that he had elected to take the property as realty. As a matter of conveyancing practice, however, it is considered A should sign an assent to the vesting of B's interest in himself and (it may be in the same document) a statement that being entitled to the whole equitable interest he has elected to retain the house as realty. The assent should be submitted to the Controller of Stamps to be marked (on proof that the estate is sub £1,000) with a statement that it is not chargeable with duty. Save in such cases *ad valorem* duty is claimed on assents to the vesting of property appropriated to the surviving spouse's £1,000.

In Lighter Vein.

The Week's Anniversary.

"For ten days more he lay with no material change in his condition, at the end of which time it became clear that he was rapidly sinking, and on the afternoon of January 27th, 1857, in the same perfect repose, with two gentle sighs, he breathed his last." So died Mr. Baron Alderson after a short illness which, first manifesting itself in unwonted fits of drowsiness, soon brought about prolonged spells of unconsciousness from which he passed gently to the eternal sleep. Seldom had he seemed to enjoy a holiday more thoroughly than his last Long Vacation passed at Dieppe. A few months later he presided at the Liverpool Assizes with unusual force and ability. He left the city, however, in melancholy circumstances. The sudden news by telegraph of the grave illness of his third son, followed by a long night journey passed in great anxiety of mind, doubtless contributed to undermine his constitution. Perhaps he felt this himself, for, before his departure, he exclaimed with slow emphasis: "I shall never go another circuit." Still, at Christmas he was able to gather round his table, as he loved, his family and friends. A slight sleepiness oppressed him that day, but not seriously enough to challenge much observation. It was early in the New Year that the blow fell and he lapsed into an unconsciousness in which there were but few transient intervals. When he awoke, he would address each of those around him with the fondest affection, and only once did he speak of himself, when, in answer to an inquiry how he felt, he replied briefly: "The worse, the better for me." He was buried under the shadow of his brother's church at Risby.

A Tail Twist.

"I have been a barrister myself and know how these things are done. I have had my tail twisted," said Mr. Claude Mullins in granting a remand at the North London Police Court recently. But no amount of forensic experience can afford full protection for the judicial tail. Marshall Hall once even succeeded in inflicting a notable twist on the ever vigilant Mathew, J. He was appearing for the plaintiff in a breach of promise case, and though seduction appeared all too plainly on the face of the correspondence, the girl's parents were extremely anxious to avoid advertising the lapse. Marshall Hall therefore instructed the solicitor not to prepare a bundle of correspondence for the court—a bold step, since Mathew, J., had been one of the first judges to insist on proper provision being made in this respect. When the judge inevitably called for his bundle, Marshall Hall pretended to consult the solicitor and then announcing his regret at the omission, said that if he took the necessary letters from his own bundle and handed them up to the bench, the reading of much irrelevant matter would be saved. To this the judge grumblingly assented and the half-dozen letters read did not reveal the secret. The verdict was won and Mathew was none the wiser.

Wigs and Hair.

Evidently the grandeur of ceremonial horse-hair begets indifference to meaner adornments of the head, since two judges in one week have uttered words not pleasing to barbers and their brethren. First, Rowlatt, J., hinted that he would rather have £500 than a rejuvenated head of hair (or is that only a side-light on the alarming effect of reduced judicial salaries ?). Then Judge Crawford, having compared a silvery head with the blond wig which had covered it, declared emphatically that "the wig was an atrocity," and had some plain masculine things to say about "a woman of sixty-three who should have had more sense than to have had dyed her grey hairs," which in a woman "generally are very beautiful in my common judgment." Perhaps, then, it was æsthetic indignation which once moved the famous Serjeant Arabin, Common Serjeant of London, thus to address a female witness

at the Old Bailey: "You come here with your head in a false wig. If you can't speak out, I'll take your bonnet off, and if you don't speak out then I'll take your hair off!"

THE ROOT OF THINGS.

When in a recent Chancery action, before Luxmoore, J., a well-known veteran Chancery silk cited "Williams on Personal Property," his opponent remarked, "My friend is going back to the cradle of the law," and laughingly asked "Do you remember this from your student days?" He was immediately reminded that "it wasn't the eighteenth edition in those days." This recalls the tale of the counsel who, on being asked by a Chief Justice for his authority for some legal proposition, told the usher to hand his lordship "Blackstone on Chitty or some other elementary book." But here was no elementary point, though at first sight it looked a simple matter of conversion of some timber. The argument lasted three days; the citations went back to Henry IV, and judgment was reserved for the consideration of two contradictory leading cases. Rarely can a real modern case have sounded to laymen more like Belloc's famous parody, "*Petre* v. *Blagden*," where the plaintiff had "Record of Relief *Non Obstante*, that is, he had a technical decision in his favour. But he could not recover what the old law called before the Consolidating Act of 22 Vic. 15, Damnification Personal. In plain English, he could not enforce Seisin Virtual and in Plein." In that case the argument went back to Edward III.

Obituary.

MR. JUSTICE ARCHIBALD.

The death was recently announced of The Hon. John Sprott Archibald, late Chief Justice of the Superior Court, Montreal, at the age of eighty-nine. Mr. Justice Archibald graduated at McGill University and was called to the Quebec Bar in 1871. In 1880 he was appointed Professor of Criminal Law at McGill University, and seven years later he took silk. He was made a Judge of the Superior Court in 1893, and became Chief Justice in 1915. He retired in 1922.

MR. F. FREKE PALMER.

Mr. Frederick Freke Palmer, solicitor, of Bryanston Square, W.1, collapsed and died at the Connaught Rooms, London, on Wednesday last, after finishing a speech at a dinner of the Grand Stewards Lodge of Freemasons. Mr. Palmer, who was in his seventieth year, was educated at Marlborough, and was admitted a solicitor in 1884. He built up one of the largest criminal practices in this country, and was a very well-known figure at the London Police-courts, where he took part in some of the most important criminal cases of recent years.

MR. A. CONOLLY.

Mr. Alfred Conolly, who had been Town Clerk of Llandudno since 1891, died at his home on Saturday, the 16th January, at the age of seventy-one. Mr. Conolly, who was admitted in 1902, was also Clerk to the North Wales and South Cheshire Joint Electricity Board. He played a prominent part in the development of Llandudno into its present position as a well-known health resort.

MR. H. R. LAMONBY.

Mr. Henry Ravensworth Lamonby, solicitor, of London and Penrith, died recently in London. Mr. Lamonby, who was admitted in 1906, became a partner, together with his brother, Mr. Lawrence Lamonby, in the firm of Messrs. Little & Lamonby (now Messrs. Little & Co.), of Penrith, the partnership subsisting until a short time before the war. After working in the Income Tax Office at Carlisle, and later on the Income Tax staff at Somerset House, Mr. Lamonby returned to the law a few years ago, and became private solicitor to Lord Waring.

MR. R. WILLIAMS.

Mr. Robert Williams, Registrar of the Ashbourne County Court, and a member of the firm of Messrs. Holland, Rigby and Williams, solicitors, of Ashbourne, died on Friday, the 8th January, aged sixty-six. Mr. Williams was admitted a solicitor in 1888, after serving his articles with the firm of which he ultimately became a partner. In 1908 he was appointed Clerk to the Ashbourne Urban District Council, a position he resigned about two years ago.

MR. A. H. ONSLOW.

Mr. A. H. Onslow, solicitor, a partner in the firm of Messrs. Gwynn, Onslow & Soars, solicitors, of All Saints' Court, Bristol, died recently at the age of sixty-nine. Mr. Onslow, who was the son of the late Sir Matthew Onslow, fourth baronet, of St. Tudy, was educated at Blundell's School, and was admitted a solicitor in 1884.

Notes of Cases.

Court of Appeal.

Westminster Bank *v.* **Osler.**

National Bank *v.* **Baker.**

Lord Hanworth, M.R., Greer and Romer, L.JJ. 18th January.

REVENUE—INCOME TAX—BANK—PROFIT FROM CONVERSION OF BONDS INTO WAR LOAN—ASSESSABILITY TO INCOME TAX—NATIONAL REALISATION OF BONDS.

Appeals from decisions of Rowlatt, J., taken together as involving the same question of law.

In the first case, Westminster Bank, Limited, during the war, acquired as part of its assets £7,505,000 5 per cent. National War Bonds of various issues. Taking advantage of the right contained in certain of these bonds, or of a similar right offered by the Government, to convert the bonds into longer term securities, the bank surrendered them and acquired in exchange £8,314,700 (nominal) 3½ per cent. Conversion Loan and £1,368,421 (nominal) 5 per cent. War Loan. It was agreed by the bank that the securities so received were greater in value than the bonds surrendered by the sum of £141,750. The bank's practice was not to bring into account as a profit any appreciation of securities unless they had been actually sold.

ROWLATT, J., affirming a decision of the Special Commissioners, held that the profit of £141,750 resulted in the course of business, and that, although there had been no sale of the War Bonds, they had in fact been disposed of at the profit stated, and that the profit was part of the bank's business earnings for the year and was assessable to tax. The bank appealed. The National Bank appealed against a like decision, the only difference being that in the latter case the conversion was all of bonds which, by the terms of their own issue, were eligible for conversion into War Loan.

THE COURT dismissed the appeals. Lord HANWORTH, M.R., said that Rowlatt, J., had followed his own decision in *Royal Insurance Co.* v. *Stephen* (14 Tax Cas. 22). There the insurance company had numerous investments in the various railways, and, under the conditions of the Railways Act, 1921, they received in exchange stocks in the four amalgamated railway companies, the market value of which was less than that paid for the old stocks. It was held that the old investments had been closed and realised and new investments made, showing a loss, which the company could bring into its accounts. Rowlatt, J., found that the transaction there was equivalent to a realisation of the old stocks. It was true that all volition was taken away, but there could be a profit or a loss quite apart from volition. In *Commissioner of Taxes* v. *Melbourne Trust, Limited* [1914] A.C. 1001,

Lord Dunedin, quoting from the Scottish case of *California Copper Syndicate* v. *Harris*, 6 F. and F. 894; 5 Tax Cas., 159, said ([1914] A.C., at p. 1010): "It is quite a well-settled principle in dealing with questions of income tax that when the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Sched. D of the Income Tax Act, 1842, assessable to income-tax. But it is equally well established that enhanced values obtained from realisation or conversion of securities may be so assessable when what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business." It was not possible for the court to disregard such an expression of opinion. In the present case what was the real nature of the transaction? It was simply a sale, on certain terms fixed by the Government, and a reinvestment of the profits. Whether the banks treated it as such in their books was not material. In his view there had been a realisation at a profit of the bonds originally held.

GREER and ROMER, L.JJ., delivered judgments to like effect.

COUNSEL: *Latter*, K.C., and *Scrimgeour*, for the Westminster Bank; *Wilfrid Greene*, K.C., and *Scrimgeour*, for the National Bank; *Sir William Jowitt*, K.C. (Attorney-General), and *Reginald Hills*, for the Crown.

SOLICITORS: *Travers-Smith, Braithwaite and Co.*, for Westminster Bank; *Stephenson, Harwood and Tatham*, for National Bank; *Solicitor of Inland Revenue*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Russian and English Bank *v.* Baring Bros. & Co., Ltd.

Eve, J. 12th January.

STAYING PROCEEDINGS—ACTION BY RUSSIAN BANK WITH LONDON BRANCH—DISSOLUTION OF BANK—POSITION OF BANK—POWER TO RECOVER ASSETS—AUTHORITY TO SUE.

This was a procedure summons taken out by the defendants asking that the action by the plaintiffs be stayed, on the ground that the bank had been dissolved by the Soviet Government and had no legal existence either in Russia or in Great Britain. The action had been pending since 1921, and had been brought to recover two large sums alleged to be moneys of the plaintiff bank in the hands of the defendants, who now asked that proceedings might be stayed on the ground that the action was begun without the authority of the plaintiff bank. The bank was incorporated under Russian law in April, 1911, and established a branch in London in November, 1915, where business was being carried on when the revolution broke out in November, 1917. At that date the bank's capital was 15,000,000 roubles in 60,000 shares, of which some 45,000 were held in trust for British subjects domiciled here. The last general meeting was held in Petrograd in June, 1917, and at some subsequent date, possibly after the institution of the action, but certainly long before the issue of the summons, the plaintiff bank was dissolved and ceased to exist according to Russian law.

EVE, J., in the course of a reserved judgment, said the question was, whether the corporation interested in the assets pertaining to the English branch of the bank or their survivors could continue to use the name of the bank in an action to recover moneys alleged to form part of such assets. But for a passage in Lord Finlay's speech in *Russian Commercial and Industrial Bank* v. *Le Comptoir d'Escompte de Mulhouse* [1925] A.C., at p. 141, he (Eve, J.), would have thought that the question was incapable of any but a negative answer. A non-existent person cannot sue, and it being admitted that the plaintiff bank had long ceased to exist in Russia, he would be disregarding the emphatic opinions of all the members of the Court of Appeal if he allowed the action to be further prosecuted. Once the court was made aware that the plaintiff was incapable of maintaining the action, it was bound to put an end to it. He appreciated that the judgment might involve difficult questions, but he could not help thinking that those difficulties could be mitigated by adoption and ratification by a liquidator in a winding up instituted under s. 338 of the Companies Act, 1929. An order would therefore be made staying the action, and the costs of all parties would be paid out of the fund.

COUNSEL: *Gavin Simonds*, K.C., and *L. Tillard*; *Rayner Goddard*, K.C., and *Sir A. Richardson*, K.C.; *Stafford Crossman*.

SOLICITORS: *Bischoff, Coxe, Bischoff & Thompson*; *Guedalla, Jacobson & Spyer*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Knight *v.* Gordon and Wife.

Swift, J. 15th December, 1931.

HUSBAND AND WIFE—WIFE'S DRESS—CLAIM BY DRESSMAKER—NOT NECESSARIES—JUDGMENT AGAINST WIFE, BUT FOR HUSBAND—COSTS—HOW HUSBAND'S COSTS PAID—REMEDY AGAINST WIFE.

In this action, Alice Maria Knight, trading as M. E. Lovell, Court dressmaker, claimed from Alexander Douglas Gordon and his wife, May Gordon, £963 9s. 6d., the price of goods sold and delivered, labour done, and materials supplied, including dresses and other articles of attire ordered by and supplied to Mrs. Gordon. Mr. Gordon denied that his wife was his agent or had any authority from him to order the goods. Mrs. Gordon denied that she was personally liable.

SWIFT, J., after evidence had been given, said that he had come to the conclusion that the goods were not necessaries, but were quite unnecessary for the station in life which the wife occupied, the husband having amply supplied her with all necessaries. There would be judgment for the plaintiff against Mrs. Gordon for the amount claimed, with costs, and judgment for Mr. Gordon, with costs.

On the 16th December, his lordship, dealing with the question of how Mr. Gordon's costs were to be paid, said that the plaintiff was bound to join the husband as a defendant. "I am satisfied," said his lordship, "that in justice to all three parties the husband's remedy ought to be against the wife and that he (the husband) should not be in a position to saddle the plaintiff with the right to recover his (the husband's) costs from his co-defendant. There would be an order accordingly.

COUNSEL: *M. Hilbery*, K.C., and *Hubert Hull*, for the plaintiff; *J. E. Singleton*, K.C., and *Valentine Holmes*, for Mr. Gordon; *F. S. Laskey*, for Mrs. Gordon.

SOLICITORS: *Edwin Coe & Co.*; *Andrew, Wood, Purves and Sutton*; *Kenneth Brown, Baker, Baker*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Rex *v.* Whytt and Others: *Ex parte* Minister of Pensions.

Avory, Hawke and Humphreys, JJ. 21st December, 1931.

WAR PENSIONS—APPEAL TRIBUNAL—JURISDICTION—NOTICE UNDER WAR PENSIONS (FINAL AWARDS) AMENDMENT REGULATIONS, 1923, REGULATION 3.

The Court made absolute a rule *nisi* obtained at the instance of the Minister of Pensions, calling on three of the members of the Pensions Appeal Tribunal under the War Pensions Act, 1919, to show cause why a writ of *certiorari* should not issue to bring up and quash a decision of the tribunal dated the 19th June, 1931, setting aside an award made by the Minister of Pensions dated the 6th February, 1920, in favour of Lieutenant Gilbert Price, now totally deaf, and who appealed in January last against the award made in 1920, when he was awarded a gratuity of £30. The grounds on which the

rule was granted were that the tribunal had no jurisdiction to hear the appeal of Mr. Price, and were wrong in law in holding that the appeal was not out of time, and /or in holding that the Minister had not given proper notice under Regulation 3 of the War Pensions (Final Awards) Amendment Regulations, 1923. By the War Pensions (Final Awards) Amendment Regulations, 1923, dated the 2nd February, 1923, the date fixed in the case of officers in a category which included Mr. Price was 7th February, 1923. By Regulation 3: "Notice of the right of appeal shall be published in three successive issues of *The British Legion* and in six successive issues of the principal daily or weekly newspapers circulating in London and in the provinces, and suitable notices shall be displayed in the local offices of the Ministry." The regulations were in fact published in *The British Legion*, in one London daily newspaper, and in several provincial daily newspapers, but in no weekly newspaper. When Mr. Price's appeal came before the tribunal in June, 1931, the representative of the Ministry objected that the appeal was out of time, but the tribunal unanimously decided that publication in one London daily newspaper did not comply with the requirement of publication in "the principal daily or weekly newspapers circulating in London," and decided to hear the appeal, which they allowed, setting aside the award of 1920.

AVORY, J., said that in his opinion the Appeal Tribunal had fallen into error in holding that the regulation required publication in more than one of the principal London daily newspapers. The alternative to that view was that the regulation meant that the notice should be published in six successive issues of all the principal daily or weekly newspapers circulating in London and in all such newspapers circulating in the provinces. That could not be a proper construction of the regulation, and the decision of the Appeal Tribunal that they had jurisdiction to hear the appeal was wrong.

HAWKE, J., and HUMPHREYS, J., agreed. Rule made absolute.

COUNSEL: *Sir Patrick Hastings*, K.C., and *Ralph Thomas* showed cause for Mr. Price; *The Attorney-General* (Sir William Jowitt, K.C.), and *Wilfrid Lewis* supported the rule.

SOLICITORS: *Fowler, Legg & Wood; The Treasury Solicitor.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

NAMES OF CASES previously reported in current volume.

Societies.

Law Students' Debating Society.

The quarterly meeting of the Society was held at The Law Society's Court Room, 60, Carey-street, on Tuesday, 12th January, 1932 (Chairman, Mr. H. J. Baxter). The Secretaries in their quarterly report stated that six general and four legal debates had been held since the session opened, and in addition a joint debate with another society at which His Honour Judge Shewell Cooper presided. The average attendance had been twenty-nine as compared with twenty-two last session. Fourteen new members had been elected and eighteen members had become life members. The total membership was 358. Mr. R. P. Croom-Johnson, K.C., M.P., had been elected a trustee in place of Mr. G. Holme Bower, deceased. The Society now met in The Law Society's Court Room at 60, Carey-street instead of at The Law Society's Hall. A new edition of the Society's handbook had been published. After the special business of the day a debate took place on the following subject: "That the case of *Bottomley* v. *Bannister*, 48 T.L.R. 39, was wrongly decided." Mr. R. Langley Mitchell opened in the affirmative. Miss H. M. Cross opened in the negative. Mr. G. Cohen seconded in the affirmative. Mr. F. H. O'Reilly seconded in the negative. The following members also spoke: Messrs. E. F. Iwi, P. E. Robertson, P. W. Iliff, N. F. Afoumado, E. Maitland Woolf and K. D. C. Nation-Dixon. The opener having replied, and the Chairman having summed up, the motion was lost by three votes. There were twenty-seven members and five visitors present.

The Solicitors' Clerks' Pension Fund.

The second annual meeting of this Fund is to be held on Thursday, 4th February, 1932, at 6.30 p.m., at The Law Society's Hall, Chancery-lane, London, W.C.2, and Sir Roger Gregory, chairman of the committee of management, will occupy the chair. A hearty invitation to attend is given to all solicitors and solicitors' clerks. A copy of the report and accounts for 1931 will be sent to any interested person upon request.

The Fund has made good progress during 1931. The membership now consists of 385 clerks, employed by 116 firms. The contributions and lump sums received during the year amount to £9,084.

The committee feel strongly that the principle of making provision for the old age of clerks who have given their best to their firms ought to be admitted in every office, and that if it is not possible to enter all the clerks as members, a commencement should be made with some of the younger men. The contributions are paid in equal proportions by employers and clerks, and pensions may be insured for any sum up to £300 per annum.

The offices of the Fund are at 2, Stone-buildings, Lincoln's Inn, London, W.C.2, and the secretary will forward literature and forms of application for membership on receipt of your enquiry.

Solicitors' Benevolent Association.

The monthly meeting of the directors was held on the 13th January at 60, Carey-street, W.C., Mr. W. A. Coleman (Leamington) in the chair. The other directors present were Messrs. A. C. Borlase (Brighton), P. D. Botterell, C.B.E., R. Bullin (Portsmouth), E. R. Cook, C.B.E., T. S. Curtis, E. F. Dent, R. Epton (Lincoln), A. G. Gibson, C. G. May, H. F. Plant, A. B. Urmston (Maidstone) and H. White (Winchester). The sum of £984 was distributed in grants of relief, twenty-five new members were admitted, and other general business transacted.

Middle Temple.

Wednesday, 20th January, being the Grand Day of Hilary Term, at Middle Temple, the Master Treasurer, Mr. Leslie De Gruyther, K.C., and the Masters of the Bench, entertained at dinner the following guests: The Netherlands Minister, Lord Hanworth (Master of the Rolls), Lord Atkin, Sir Thomas Horder, the Dean of St. Paul's, Brigadier-General Sir Valentine Murray, Sir Robert Witt, Sir Walford Davies, Commander Sir Cooper Rawson, M.P., Mr. Philip H. Martineau (President of The Law Society), Rev. J. F. Clayton (Reader, Temple Church), and Mr. T. F. Hewlett (Under Treasurer).

The Benchers present, in addition to the Master Treasurer, were Sir Robert A. McCall, K.C., Judge Ruegg, K.C., Sir Ellis Hume-Williams, K.C., Mr. Aspinall, K.C., Lord Craigmyle, Sir Alfred Tobin, K.C., Viscount Sankey, Mr. Edward Shortt, K.C., Mr. Lowenthal, K.C., Judge Holman Gregory, K.C., Mr. Micklethwait, K.C., Mr. Hart, K.C., Lord Salvesen, Viscount Finlay, Mr. Dunne, K.C., Mr. Gover, K.C., Judge Dumas, Judge Sir Thomas Artemus Jones, K.C., Sir Henry Curtis Bennett, K.C., Mr. Scholefield, K.C., Mr. Tindal Atkinson, Mr. Frampton, Mr. Ian Macpherson, K.C., M.P., and Mr. Bowen Davies, K.C.

United Law Society.

A meeting of the above Society was held in the Middle Temple Common Room on Monday evening, 18th January. Mr. George Bull in the chair. Mr. C. H. Moseley moved "That in the opinion of this House the economic condition of the country demands an immediate reduction in the standard of living." Mr. R. E. Ball opposed, and there also spoke Messrs. G. E. Habershon, S. A. Redfern, G. B. Burke, H. H. West, T. R. Owens and H. S. Wood-Smith. Mr. C. H. Moseley having replied, the motion was put to the House, and there voted for the motion five and against five. The Chairman gave his casting vote for the motion, which was therefore carried by one vote.

Legal Notes and News.

Honours and Appointments.

Mr. William Chree, K.C., was elected Dean of the Faculty of Advocates at a meeting of the Faculty in Edinburgh last Wednesday. Mr. Chree was called to the Scottish Bar in 1892, and took silk in 1912. He has been Procurator of the Church of Scotland since 1923.

Mr. John Bradshaw Kelly, solicitor, Deputy Clerk of the Peace for Berkshire, has been appointed Clerk of the Peace and Clerk to the County Council for Huntingdonshire, in succession to Mr. J. P. Maule.

Mr. Eric Bellingham, LL.B., solicitor, Deputy Town Clerk of Wakefield, has been appointed Deputy Town Clerk of Rotherham.

Mr. FitzRoy Saipte, solicitor, a member of the firm of Messrs. Wilde, Wigston & Saptes, of College Hill, E.C., has been appointed Solicitor of St. Bartholomew's Hospital.

Mr. Justice Avory has appointed Lieutenant-Colonel Raymond E. Negus, D.S.O., to be Associate on the South-Eastern Circuit in succession to Mr. Harold S. Stowe, who has been appointed Clerk of Assize.

Wills and Bequests.

Mr. Edward Rowland Cowley, solicitor, of Brighton, a partner in the firm of Messrs. Cowley & Mitchener, left £2,118, with net personalty £2,022.

Mr. Charles H. Large, solicitor, of Swaffham, Norfolk, left £10,206, with net personalty £6,995.

RESIGNATION OF THE CITY CORONER.

Dr. F. J. Waldo, who is in his eightieth year, has resigned his office as Coroner for the City of London and the Borough of Southwark.

Dr. Waldo was called to the Bar by the Middle Temple in 1896, and was the first medical officer of health of the Inner and Middle Temples and the parish of St. George the Martyr, Southwark. He was tutor in public health to St. Bartholomew's Hospital Medical School, and also Milroy lecturer to the Royal College of Physicians, and special lecturer on Medical Jurisprudence to the Council of Legal Education. In 1901 he was appointed City Coroner, and has thus held the office for over thirty years.

SOUTH-EASTERN CIRCUIT.

The following days and places have been fixed for the Winter Assizes, 1932, as announced in *The London Gazette*:—

South-Eastern Circuit.—Mr. Justice McCardie.—Tuesday, 12th January, at Huntingdon; Friday, 15th January, at Cambridge; Thursday, 21st January, at Ipswich; Thursday, 28th January, at Norwich; Thursday, 4th February, at Chelmsford. Mr. Justice Avory.—Monday, 15th February, at Hertford; Thursday, 18th February, at Maidstone; Monday, 29th February, at Kingston; Tuesday, 8th March, at Lewes.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date	Emergency Rota.	Appeal Court No. 1.	Group I. Mr. Justice Eve. Non-Witness.	Mr. Justice Maugham. Witness. Part II.
M'nd'y Jan. 25	Mr. Jones	Mr. More	Mr. Andrews	Mr. *Ritchie
Tuesday .. 26	Ritchie	Hicks Beach	More	*Andrews
Wednesday. 27	Blaker	Andrews	Ritchie	*More
Thursday . 28	More	Jones	Andrews	Ritchie
Friday 29	Hicks Beach	Ritchie	More	*Andrews
Saturday .. 30	Andrews	Blaker	Ritchie	More

Date	Group I. Mr. Justice Bennett. Witness. Part I.	Mr. Justice Clauson. Witness. Part II.	Group II. Mr. Justice Luxmoore. Witness. Part I.	Mr. Justice Farwell. Non-Witness.
M'nd'y Jan. 25	Mr. More	Mr. *Hicks Beach	Mr. *Jones	Mr. Blaker
Tuesday .. 26	*Ritchie	*Blaker	Hicks Beach	Jones
Wednesday. 27	Andrews	*Jones	*Blaker	Hicks Beach
Thursday . 28	*More	Hicks Beach	Jones	Blaker
Friday 29	Ritchie	Blaker	*Hicks Beach	Jones
Saturday .. 30	Andrews	Jones	Blaker	Hicks Beach

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 4th February, 1932.

	Middle Price 20 Jan. 1932.	Flat Interest Yield. £ s. d.	Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	84½	4 14 11	—
Consols 2½%	55	4 10 11	—
War Loan 5% 1929-47	98	5 2 0	—
War Loan 4½% 1925-45	94	4 15 9	5 2 0
Funding 4% Loan 1960-90	86¼	4 12 9	4 13 9
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	92½	4 6 6	4 8 9
Conversion 5% Loan 1944-64	100½	4 19 6	4 19 6
Conversion 4½% Loan 1940-44	95¼	4 14 6	5 0 9
Conversion 3½% Loan 1961	75½	4 13 0	—
Local Loans 3% Stock 1912 or after	62¼	4 16 5	—
Bank Stock	243½	4 18 7	—
India 4½% 1950-55	74½	6 0 10	—
India 3½%	55	6 7 3	—
India 3%	47	6 7 8	—
Sudan 4½% 1939-73	91½	4 18 4	5 0 3
Sudan 4% 1974	82½	4 17 0	5 0 0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	82	3 13 2	4 5 9
Colonial Securities.			
Canada 3% 1938	87	3 9 0	5 5 0
Cape of Good Hope 4% 1916-36	90½	4 8 5	6 4 10
Cape of Good Hope 3½% 1929-49	77½	4 10 4	5 10 0
Ceylon 5% 1960-70	93½	5 6 11	5 8 0
Commonwealth of Australia 5% 1945-75	82	6 1 11	6 4 6
Gold Coast 4½% 1956	91½	4 18 4	5 2 6
Jamaica 4½% 1941-71	89½	5 0 7	5 2 6
Natal 4% 1937	90½	4 8 5	6 5 0
New South Wales 4½% 1935-45	72½	6 4 2	6 11 3
New South Wales 5% 1945-65	77½	6 9 0	6 14 6
New Zealand 4½% 1945	80½	5 11 10	6 15 0
New Zealand 5% 1946	89½	5 11 9	6 2 6
Nigeria 5% 1950-60	95½	5 4 9	5 6 0
Queensland 5% 1940-60	77½	6 9 0	6 15 6
South Africa 5% 1945-75	95½	5 4 9	5 5 3
South Australia 5% 1945-75	77½	6 9 0	6 13 6
Tasmania 5% 1945-75	77½	6 9 0	6 13 6
Victoria 5% 1945-75	78½	6 7 5	6 10 0
West Australia 5% 1945-75	79½	6 5 9	6 8 6
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.			
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	61	4 18 4	—
Birmingham 5% 1946-56	101	4 19 0	4 19 3
Cardiff 5% 1945-65	98½	5 1 6	5 2 3
Croydon 3% 1940-60	68½	4 7 7	5 2 6
Hastings 5% 1947-67	98½	5 1 6	5 2 0
Hull 3½% 1925-55	75	4 13 4	5 7 3
Liverpool 3½% Redeemable by agreement with holders or by purchase	72	4 17 3	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	52	4 16 2	—
London City 3% Consolidated Stock after 1920 at option of Corporation	62	4 16 9	—
Metropolitan Water Board 3% "A" 1963-2003	63½	4 14 6	—
Do. do. 3% "B" 1934-2003	64	4 13 9	—
Middlesex C.C. 3½% 1927-47	84	4 3 4	5 0 0
Newcastle 3½% Irredeemable	71	4 18 7	—
Nottingham 3% Irredeemable	61	4 18 4	—
Stockton 5% 1946-66	98½	5 1 6	5 2 3
Wolverhampton 5% 1946-56	98½	5 1 6	5 2 3
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	74	5 8 1	—
Gt. Western Railway 5% Rent Charge	87½	5 14 3	—
Gt. Western Rly. 4% Preference	72½	6 17 11	—
L. & N.E. Rly. 4% Debenture	67½	5 18 6	—
L. & N.E. Rly. 4% 1st Guaranteed	62½	6 8 0	—
L. & N.E. Rly. 4% 1st Preference	47½	8 8 5	—
L. Mid. & Scot. Rly. 4% Debenture	70½	5 13 6	—
L. Mid. & Scot. Rly. 4% Guaranteed	62½	6 8 0	—
L. Mid. & Scot. Rly. 4% Preference	46½	8 12 0	—
Southern Railway 4% Debenture	71½	5 11 11	—
Southern Railway 5% Guaranteed	85	5 17 8	—
Southern Railway 5% Preference	65	7 13 10	—